

EXHIBIT 7

1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF COOK)
 3 IN THE CIRCUIT COURT OF COOK COUNTY
 4 COUNTY DEPARTMENT - LAW DIVISION
 5
 MICHAEL J. MADDEN and)
 6 JEAN MADDEN,)
) Case No. 03 L 000433
 7 Plaintiffs,)
)
 8 vs)
)
 9 F.H. PASCHEN, S.N.)
 NIELSON, INC., JACOBS)
 10 FACILITIES, INC., CLIFFS)
 AND CABLES, LLC, AND)
 11 VOA & ASSOCIATES,)
 INC.,)
 12)
 Defendants.)

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The Discovery Deposition of ALBERT
 MIGON taken before SHERRY L. JONES, a Certified
 Shorthand Reporter pursuant to the provisions of
 the Illinois Code of Civil Procedure and the
 applicable rules of the Supreme Court to the
 taking of discovery deposition at 222 North
 LaSalle Street, Suite 430, Chicago, Illinois, at
 the hour of 10:00 p.m., on the 7th day of
 February of A.D., 2006.

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 2</p> <p>1 Present: 2 HARMAN FEDICK & O'CONNOR LTD BY: MR. KEVIN W. O'CONNOR 3 222 North LaSalle Street, Suite 430 Chicago, Illinois 60601 4 Appeared on behalf of the Plaintiffs; 5 BRENNER, FORD, MONROE & SCOTT, LTD. BY: MR. KENNETH M. BATTLE 6 33 North Dearborn Street, Suite 300 Chicago, Illinois 60602 7 Appeared on behalf of F.H. Paschen and S.N. Nelsen, Inc.; 8 HINSHAW & CULBERTSON LLP 9 BY: MR. RICHARD VELAZQUEZ 222 North LaSalle Street, Suite 300 10 Chicago, Illinois 60601 Appeared on behalf of Jacobs Facilities, Inc.; 11 FRATERRIGO, BERANEK, FEIEREISEL & KASBOHM 12 BY: MS. NADERH H. ELRABADI 55 West Monroe Street, Suite 3400 13 Chicago, Illinois 60603 Appeared on behalf of VOA & Associates; 14 MECKLER BULGER & TILSON, LLP 15 BY: MR. ANDREW M. HUTCHINSON 123 North Wacker Drive, Suite 1800 16 Chicago, Illinois 60606 Appeared on behalf of Schuler & Shook; 17 NYHAN, PFISTER, BAMBRICK, KINZIE & LOWRY, P.C. 18 BY: MR. DEAN BARAKAT 20 North Clark Street, Suite 1000 19 Chicago, Illinois 60602 Appeared on behalf of School District 230. 20 21 22 23 24</p>	<p style="text-align: right;">Page 4</p> <p>1 (Whereupon, Migon Exhibit 2 Nos. 1 and 2 were marked 3 for identification.) 4 (The witness was duly sworn.) 5 MR. O'CONNOR: Please state your name 6 for the record. 7 THE WITNESS: Albert Migon. 8 MR. O'CONNOR: Let the record reflect 9 that this is the discovery deposition of Albert 10 Migon taken pursuant to notice, taken pursuant 11 to Illinois Supreme Court rules, and all local 12 applicable rules of the Circuit Court of Cook 13 County. 14 Mr. Migon, you've given your 15 deposition at least once before, correct? 16 THE WITNESS: Yes. 17 MR. O'CONNOR: And that was in the 18 Regalado case? 19 THE WITNESS: Yes. 20 MR. O'CONNOR: Have you given it any 21 other time? 22 THE WITNESS: No. 23 MR. O'CONNOR: Because my understanding 24 is you gave that deposition relatively recently</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 3 EXAMINATION OF ALBERT MIGON PAGE 4 BY MR. O'CONNOR 6 BY MR. BATTLE 107 5 BY MR. VELAZQUEZ 110 BY MR. HUTCHINSON 135 6 BY MR. O'CONNOR 143 BY MR. BATTLE 150 7 BY MR. VELAZQUEZ 151 BY MR. BARAKAT 153 8 BY MS. ELRABADI 160 BY MR. BARAKAT 166 9 10 11 12 13 EXHIBITS MARKED 14 MIGON EXHIBIT NOS. 1 AND 2 4 15 MIGON EXHIBIT NO. 3 107 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 5</p> <p>1 in the last month or two, correct? 2 THE WITNESS: No, I think it was later 3 than that. 4 MR. O'CONNOR: Okay. 5 You still remember the ground rules 6 about answering out loud and things of that 7 nature? 8 THE WITNESS: Yeah, more or less. 9 MR. O'CONNOR: I won't go over all of 10 those. The only thing I'll remind you is if I 11 ask you a question and if you don't understand 12 the question, please ask me to repeat it or 13 rephrase it. Is that agreeable? 14 THE WITNESS: Okay. 15 MR. O'CONNOR: If I ask you a question 16 and you answer my question, I'm going to assume 17 that you understood my question and that your 18 answer was in response to the question I just 19 gave. Is that fair? 20 THE WITNESS: Okay. 21 MR. VELAZQUEZ: Then also answer only if 22 you know. 23 THE WITNESS: Okay. 24 MR. O'CONNOR: I don't know if that</p>

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 6</p> <p>1 means anything to you. What he is saying is if 2 you're going to guess at something, please don't 3 guess. If you are going to give a best 4 approximation because we're talking about dates 5 and times, which is very difficult coming later, 6 you can certainly give your best approximation 7 on things. Is that fair? 8 THE WITNESS: Yes. 9 ALBERT MIGON, 10 called as a witness herein, having 11 been first duly sworn, was examined and 12 testified as follows: 13 EXAMINATION 14 BY MR. O'CONNOR: 15 Q You still work for VOA, sir? 16 A Yes. 17 Q And what is your title? 18 A Project architect. 19 Q Are you licensed in Illinois? 20 A No, I'm not. 21 Q How long have you been a project 22 architect for VOA? 23 A Probably about four years. 24 Q Approximately four years?</p>	<p style="text-align: right;">Page 8</p> <p>1 trained just based on his experience of doing it 2 over the years? 3 A Right. 4 Q You then as you grew up because your dad 5 was in the carpentry trade learned carpentry 6 from working with him? 7 A Right, just summers. 8 Q How many years did you do carpentry work 9 with your father? 10 A Probably four years. 11 Q What type of work did -- you said 12 residential housing? 13 A Right, residential. 14 Q Was it rehabbing? 15 A Mostly rehabbing. 16 Q Your dad would buy up a property, fix it 17 up, hopefully either keep it or rent it out or 18 turn around and sell it? 19 A No. Just someone would hire him and 20 they would just do some renovation inside or 21 something like that. Usually it was, you know, 22 just working with an owner basically. 23 Q Oh, I see. 24 Your dad was actually like a</p>
<p style="text-align: right;">Page 7</p> <p>1 A Approximately. 2 Q Have you taken any part of the licensure 3 exam to become an architect? 4 A Not yet. 5 Q Have you applied? 6 A I have. 7 Q Before working for VOA who did you work 8 for? 9 A A company called Special Projects 10 Group. 11 Q Was that in an architectural field? 12 A No, it was just like more renovation. 13 Q Do you have any background or training 14 in a construction related field? 15 A I work with my father just on 16 residential. 17 Q What was your father's trade or 18 specialty? 19 A Just carpentry. 20 Q Don't say just carpentry. 21 Was he a union carpenter? 22 A No, he wasn't. 23 Q Was it something that he just did over 24 the years and became knowledgeable and was</p>	<p style="text-align: right;">Page 9</p> <p>1 contractor -- 2 A Correct. 3 Q -- for an owner? 4 A Correct. 5 Q You've got to let me finish my question. 6 A I'm sorry. 7 Q That's the one rule. She can't take 8 down two people talking at once. You probably 9 know what I'm asking, but you have to wait until 10 I'm finished. 11 Did you ever have to work during 12 those summers on scaffolds? 13 A Not really. 14 Q Did you work on any roofs? 15 A Yeah, we did. 16 Q In terms of your training on safety when 17 you are working on a roof or elevated place, is 18 that something that you were taught by your dad? 19 A No. 20 Q Did you just go up there without any 21 kind of harness? 22 A Yes. 23 Q You did? 24 A Yes.</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 Q Did you ever have an instance where you 2 fell from any particular height? 3 A No. 4 Q Has your dad, do you know? 5 A No. 6 Q Was it just you and your dad or did he 7 have other people working for him? 8 A He did have a couple other people 9 working for him. 10 Q Did he have an actual company name or 11 was he a sole proprietor? 12 A Migon Construction is what it was 13 called, sole proprietor, I guess. 14 Q He operated under that particular 15 name? 16 A Correct. 17 Q Did you ever work over a platformed area 18 where you would have potential for falling? 19 A Not that I recall. We did mostly inside 20 work. You know, I mean on occasion if we had to 21 do an addition where somebody wanted a dormer or 22 something like that, then obviously we got on a 23 ladder to do the roof beams and things like 24 that, but that was about it.</p>	<p style="text-align: right;">Page 12</p> <p>1 like kitchen remodeling. They did, you know, 2 bathrooms. 3 Q Residential work? 4 A More residential but some highrise 5 residential. 6 Q It was highrise, low-rise, single family 7 homes? 8 A Yes. I mean, it was residential work. 9 Q You left Special Projects Group in 10 approximately 2002 then? 11 A No, in '97 it was. 12 Q After '97 who did you go to work for? 13 A VOA. 14 Q You had said you were a project 15 architect for VOA for the next four years? 16 A Yeah. I mean, I started working there 17 in '97. You're not a project architect right 18 off the back. You're more or less a draftsman, 19 and then you just kind of work your way up. 20 Q They call it an intern? 21 A Right. Well, technically you're just a 22 draftsman. An intern is someone more that they 23 hire from school. They do like a part-time 24 internship, you know, work for a few months and</p>
<p style="text-align: right;">Page 11</p> <p>1 Q During your work with your father you 2 learned of the words or the terms OSHA, 3 correct? 4 A No. 5 Q You never heard of it? 6 A No, I didn't. 7 Q What's your educational background? 8 A I went to the Illinois Institute of 9 Technology and got a bachelor's of architecture 10 there. 11 Q And what year? 12 A I graduated in '94. 13 Q And what years were you there? 14 A From '89 to '94. It was a five year 15 program. 16 Q Did you go on for any additional 17 training after that? 18 A No. 19 Q Right after you finished school, who did 20 you go to work for, Special Projects Group? 21 A Correct. 22 Q What kind of projects were you working 23 on for Special Projects Group? 24 A There was a variety of them. They did</p>	<p style="text-align: right;">Page 13</p> <p>1 then they go back to school. So, no, I wasn't 2 an intern. I was hired as a draftsman. 3 Q In '97 when you were hired as a 4 draftsman, what type of work did you do? 5 A Basically drafting on the computer. 6 Q Any particular types of projects? 7 A I had started there in residential 8 renovation. 9 Q My understanding is VOA does a lot of 10 health care related work? 11 A There is a variety of studios. We do 12 education. We do some health care. We do 13 residential, a variety of -- 14 Q So when you started out, you were in 15 that residential section? 16 A Correct. 17 Q That's kind of where your background 18 was? 19 A Yes. 20 Q How many years did you stay in that 21 residential section? 22 A Well, it was -- the project lasted for 23 approximately a year and then, you know, the way 24 they work is, you know, if there is another</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">Page 14</p> <p>1 project that comes on-line depending on who is 2 doing what and who is slowing down, they shift 3 people to that project. 4 Q In '98 what project did you get shifted 5 to? 6 A It was the Department of Natural 7 Resources office building project. 8 Q Was this a large building? 9 A Yes. 10 Q How many stories? 11 A It was just a four story building. 12 Q And what was your aspect of that 13 project? 14 A Basically it was just the drafting of it 15 at that time. 16 Q Were you drafting the entire building, 17 the interior buildout? What were you doing? 18 A No, it was more some of the details and 19 stairs, some wall sections. 20 Q Did somebody else at the company do the 21 actual structural aspects of it? 22 A We had a consultant that -- I mean, 23 typically we hire a consultant for the 24 structure, so yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Dennis O'Malley? 2 A He left the company. 3 Q In February of '02 before you started, 4 what was explained to you your role was going to 5 be at that project? 6 A Well, basically they kind of explained 7 that we had three schools that were currently 8 under construction, and basically it was just 9 going to be the project management portion of 10 it. 11 Q By project management portion of it, 12 you're walking the sites, conversing with the 13 construction managers, and making sure things 14 are getting done appropriately? 15 A Well, what we did was -- I mean, I had 16 change orders to review. I had pay applications 17 for contractors to review. We would have 18 project meetings on-site that I would have to 19 attend. You know, then also walking through the 20 building, you know, just checking to see the 21 progress of the construction and, you know, 22 making sure that -- more or less the field 23 observation. 24 Q When you started in February of '02 did</p>
<p style="text-align: right;">Page 15</p> <p>1 Q How long did that project last? 2 A Probably -- I was on it until early 2002 3 basically. 4 Q That was the sole project other than 5 maybe for a day you might have been called in to 6 do some little things; is that correct? 7 A Yes, that's correct. 8 Q Did you work on any school projects 9 before this one at Stagg High School or that 10 group of schools for District 230? 11 A No, I didn't. 12 Q Once you were done with this Department 13 of National Resources building, did you then get 14 moved over to the Stagg High School building? 15 A Yes. 16 Q When you came on board what -- do you 17 remember what month it was? 18 A I think it was approximately February of 19 '02. 20 Q Did you know who you were replacing? 21 A Yes. 22 Q Who were you replacing? 23 A Dennis O'Malley. 24 Q Did you know why you were replacing</p>	<p style="text-align: right;">Page 17</p> <p>1 you have project meetings for the Stagg School 2 specifically? 3 A We did have them, yes. 4 Q Were they on a weekly basis when you 5 started? 6 A I thought they were on a weekly basis. 7 Q At some point did it change from a 8 weekly basis to become less frequent? 9 A Well, yeah. When the construction was 10 finishing up, the schools kind of ended at 11 different periods, and Stagg I believe was the 12 first one more or less to get finished. So I 13 think the meetings -- we no longer had weekly 14 meetings. They may have been monthly or every 15 couple of weeks, but I don't recall. 16 Q You were working with Ms. Fitzgerald on 17 that Stagg School? 18 A Yes. 19 Q She described that in May of 2002 that 20 she went off of this project. Do you recall 21 that? 22 A Yes. 23 Q At the point she left the project were 24 you the primary one then overseeing what was</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 still remaining at that project?</p> <p>2 A Yes.</p> <p>3 Q In May of '02 after she left, were you</p> <p>4 there on a daily basis? Did you come biweekly,</p> <p>5 couple times a week? Did it depend on what was</p> <p>6 going on?</p> <p>7 A I believe it was just more the weekly</p> <p>8 basis.</p> <p>9 Q Did you have a particular day that you</p> <p>10 would come by that particular project?</p> <p>11 A I don't recall.</p> <p>12 Q Would you spend a full day there? Would</p> <p>13 you spend a half a day? What would you --</p> <p>14 A Well, depending on, you know, if the</p> <p>15 construction was almost done, there would be no</p> <p>16 reason to be there for a full day. Typically if</p> <p>17 it was just a meeting, then I was just there for</p> <p>18 the meeting.</p> <p>19 Q Were you still walking the site after</p> <p>20 she left at Stagg?</p> <p>21 A I don't recall exactly when she left</p> <p>22 but, you know, if there was something that the</p> <p>23 owner wanted us to look at then, yes, then I</p> <p>24 would.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q So you are saying at the time that the</p> <p>2 students began coming back in you would have no</p> <p>3 longer been on this project or you are saying</p> <p>4 that you just wouldn't be walking it?</p> <p>5 A I wouldn't be at Stagg. There was still</p> <p>6 Sandburg that was under construction and hadn't</p> <p>7 been completed yet, so I would have been at</p> <p>8 Sandburg.</p> <p>9 Q When was the final payout for Stagg?</p> <p>10 Wasn't it in 2003?</p> <p>11 A I don't know.</p> <p>12 Q Would you have been involved in the</p> <p>13 final payout?</p> <p>14 A No, we weren't.</p> <p>15 Q Don't you have to sign off as the</p> <p>16 architect saying that even the punch list items</p> <p>17 are correct in such that you can give a sign off</p> <p>18 to let the people get their final payment?</p> <p>19 A After a certain date the owner, you</p> <p>20 know, didn't employ us anymore. Our contract</p> <p>21 basically ran out. So we -- I know that we had</p> <p>22 nothing to do with the final payout of Stagg or</p> <p>23 actually any of the other schools.</p> <p>24 Q When did your contract run out?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Let me put it this way.</p> <p>2 School ended in May of 2002,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And then you have the summer portion?</p> <p>6 A Right.</p> <p>7 Q In the summer of 2002 did you on</p> <p>8 occasion still walk through this site at Stagg</p> <p>9 School?</p> <p>10 A I don't remember. I mean, it would have</p> <p>11 been dependent on where the construction was,</p> <p>12 you know. If there was still construction that</p> <p>13 needed to be done and we hadn't done any punch</p> <p>14 lists then, yes, I would.</p> <p>15 Q How about in the fall of 2002 when the</p> <p>16 new school year started? Do you recall walking</p> <p>17 through at that point?</p> <p>18 A No, I don't.</p> <p>19 Q You don't recall one way or the other?</p> <p>20 A No, I don't recall that I was walking</p> <p>21 through there. I thought that the construction</p> <p>22 was more or less done in there.</p> <p>23 Q Not in there. You are saying in there.</p> <p>24 A In Stagg.</p>	<p style="text-align: right;">Page 21</p> <p>1 A I think it was at the end of '02.</p> <p>2 Q December of '02?</p> <p>3 A December of '02.</p> <p>4 Q And at that point you recall that the</p> <p>5 final payouts hadn't been done at that point?</p> <p>6 A Yeah, I don't believe they have been.</p> <p>7 Q When you came on this job, did you</p> <p>8 review the contract that VOA had?</p> <p>9 A No, I didn't.</p> <p>10 Q So you had seen similar contracts I take</p> <p>11 it?</p> <p>12 A Well, typically the architects have a</p> <p>13 contract called the -- I believe it's a B201</p> <p>14 with the owner. So I had seen a previous one.</p> <p>15 The project was already under construction. I</p> <p>16 didn't bother looking at it.</p> <p>17 Q Is it basically a form contract that you</p> <p>18 guys use?</p> <p>19 A More or less, yes.</p> <p>20 Q Then you make some modifications or</p> <p>21 additions depending on the project that you are</p> <p>22 on?</p> <p>23 A Yes, sometimes they do that.</p> <p>24 Q I'll show you what I've marked as Migon</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 Group Exhibit 1, which has been tendered to me 2 as the contract for this particular project from 3 your attorneys. If you can just take a look at 4 it and tell me if that's that the standard 5 contract that you are referring to? 6 MR. BATTLE: Standard contract or the 7 particular contract? 8 MR. O'CONNOR: Not the particular, the 9 standard contract. 10 THE WITNESS: I can't be sure. 11 BY MR. O'CONNOR: 12 Q Does it look similar to other ones that 13 you have seen? 14 A It does, but typically I have seen the 15 ones that has the AIA documentation on the top, 16 and this one doesn't. 17 Q Let me ask you first of all a few 18 questions in general. 19 You have been involved in projects 20 at least even since that time where you were 21 involved in the design phase of projects? 22 A Yes. 23 Q In the design -- in that -- in the 24 design phase of the project do you agree that</p>	<p style="text-align: right;">Page 24</p> <p>1 payment to the contractor is due? Is that the 2 typical situation? 3 A Yes. 4 Q And you explained in this situation 5 though your contract ran out before final 6 payment was due? 7 A Yes. 8 Q If the original contract provided that 9 the architect wasn't to be paid until the final 10 payment was due, would there have to be some 11 modification to the contract to end your 12 services early? 13 A I'm not sure about that. I don't know 14 exactly if the contract had been specified for a 15 certain amount of days. There was a 16 construction schedule that had been done and 17 typically the contract -- for construction 18 administration and field observation it's 19 typically based on the construction line. So 20 any time construction goes over the schedule, 21 typically we would ask the owner for additional 22 compensation, you know, due to the extended 23 schedule. 24 Q And they may or may not want to have you</p>
<p style="text-align: right;">Page 23</p> <p>1 the architect is to review with the owner 2 alternative approaches to design and 3 construction of the project? 4 A Where is this at? 5 Q I'm just -- I will ask you -- I'm 6 reading from something. I'll just ask you the 7 general statement because I don't want to point 8 to something that you're not familiar with. 9 A Can you repeat the question, please? 10 Q Sure. 11 In the design phase of a project 12 would you agree that the architect, such as VOA, 13 shall review with the owner alternative 14 approaches to design and construction of the 15 project? Is that one of the roles that VOA 16 plays? 17 A Yes, I believe so. 18 Q The architect also provides a 19 preliminary evaluation of the owner's program or 20 what they are submitting that they want to do? 21 A Typically, yes. 22 Q The architect typically is the 23 representative of and shall advise and consult 24 with the owner during construction until final</p>	<p style="text-align: right;">Page 25</p> <p>1 there? 2 A That's correct. 3 Q Do you recall typically there being a 4 paragraph that says nothing contained in this 5 document shall relieve the architect from 6 responsibility or liability to the owner for any 7 failure of the architect to perform in 8 accordance with the terms of this agreement or 9 by standards of professional care? Is that -- 10 MR. BATTLE: Are you asking him if 11 that's in the original contract or is that in 12 the form contract? 13 BY MR. O'CONNOR: 14 Q Is that a typical statement? 15 A I'm not sure. 16 Q What is -- if you had read in the 17 contract that an architect has to perform in 18 accordance with the standards of professional 19 care, you've heard that term before, correct? 20 A I've heard it asked at the last 21 deposition. 22 Q All right. 23 And did you inquire of people back 24 at the office of what does conforming to the</p>

7 (Pages 22 to 25)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 26</p> <p>1 standards of professional care mean after you 2 heard it? 3 A No, I didn't. 4 Q You as an architect, what does it mean 5 when -- if I would ask you what's the standard 6 of professional care of an architect, what would 7 you respond? 8 A I'm not sure. 9 Q In your schooling and training what 10 rules, codes, provisions does an architect 11 follow in performing their work? 12 A Well, I mean, in schooling we really 13 didn't get into codes and that type of 14 information. I mean, typically school taught us 15 mostly, you know, design. There was a little 16 bit of, you know, professional practice is what 17 they call it where an architect would come in 18 and just kind of talk about the business; but 19 usually that stuff you learn after you start 20 working, you know, when you work with an 21 experienced person in the office. 22 Q When VOA starts a project, you just 23 don't design something without considering the 24 codes and --</p>	<p style="text-align: right;">Page 28</p> <p>1 conform with those codes? 2 A Yes. 3 Q And if your work doesn't -- if something 4 the owner is asking you to do doesn't conform 5 with a particular code, the architect would have 6 to advise them of that, correct? 7 A Yes. 8 Q And you would have to advise them of 9 that. If they insisted on going ahead and 10 having you draft something that didn't conform 11 with the code, what's the architecture's 12 responsibility at that point? 13 A Well, we would hopefully tell them. 14 Q You can't do it that way? 15 A Right. 16 Q You wouldn't allow them to use documents 17 that you drafted that didn't conform with a 18 code? 19 A Right. 20 Q Additional -- contention additional 21 services, are you familiar with that? 22 A Yes. 23 Q Can there be revisions, drawings, and 24 specifications or other documents that weren't a</p>
<p style="text-align: right;">Page 27</p> <p>1 A Correct. 2 Q Do you go to references? Do you go to 3 standard forms that you guys have? What do you 4 guys usually use? 5 A Typically we do -- you know, there would 6 be a code analysis or we do -- whatever code the 7 project is required to be billed by, that's what 8 we use, you know, for building -- drawing the 9 drawings to comply by the code. 10 Q What is the -- is there any general 11 codes or national standards that you guys abide 12 by? 13 A There is a variety of them. Chicago 14 building code has their own. There is the IBC, 15 which is the, you know, Illinois building code. 16 There is a variety of them. It just depends on 17 what -- sometimes they do it by region. What 18 they mandate they use. Sometimes they do it by 19 city. So, you know, whatever region, they 20 mandate what kind of code you use. 21 Q But you know on every project there are 22 certain codes that you've got to follow? 23 A Yes. 24 Q And you know that your work has to</p>	<p style="text-align: right;">Page 29</p> <p>1 part of the original agreement? 2 A Yes, there could be. 3 Q Are those revisions, drawings, or 4 specifications required by the enactment or the 5 revision of any codes, laws, or regulations 6 after the preparation of the document that can 7 come up? 8 A Yes. 9 Q And if it does, as the architect and 10 you're asked to do some revision or some code 11 comes into effect, you'll notify the owner and 12 say that we have to revise something because of 13 some change? 14 A Well, I guess it depends. Because 15 typically when you start a project and you're 16 designing to the code that's current at the 17 time, that's what you're designing to. You 18 know, codes can change over a year, over two 19 years. So if you have a project that last five 20 years, you know, you're required to design by 21 the code that you designed at the time you 22 started the project. They won't require you to, 23 you know, scrap everything that you've already 24 done just because the new codes come out and</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 that's what it is.</p> <p>2 Q An example might be if the fire</p> <p>3 protection agency required three exit signs on a</p> <p>4 particular floor and then they changed the code</p> <p>5 to require four and it doesn't involve a</p> <p>6 substantial change in the project, there may be</p> <p>7 a requirement to update to the four signs,</p> <p>8 correct?</p> <p>9 A If the owner would like, I mean, yes.</p> <p>10 We typically would get direction from the owner</p> <p>11 saying, you know, I know this was done this way.</p> <p>12 Since then, you know, it's changed and we would</p> <p>13 like to go by this change. Then they would</p> <p>14 direct us to that, yes.</p> <p>15 Q Someone has to notify you of the</p> <p>16 change?</p> <p>17 A Yes, exactly.</p> <p>18 Q Then you guys have to design it in</p> <p>19 accordance with the new code if that's what's</p> <p>20 required?</p> <p>21 A Yes.</p> <p>22 Q Is it true that as an architect that</p> <p>23 your drawings have to conform -- sorry. Strike</p> <p>24 that.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. BATTLE: Counsel, your question was</p> <p>2 is that a true statement?</p> <p>3 MR. O'CONNOR: Yes.</p> <p>4 THE WITNESS: I would agree with that.</p> <p>5 BY MR. O'CONNOR:</p> <p>6 Q In addition, the architect has to use</p> <p>7 its best efforts to obtain at least -- at the</p> <p>8 earliest practicable time review of the drawings</p> <p>9 and specifications from any governmental agency</p> <p>10 having authority over the project, quote,</p> <p>11 unquote, authority? Do you see that sentence?</p> <p>12 A Yes.</p> <p>13 Q Is that also a standard thing that the</p> <p>14 architect has to do?</p> <p>15 A I would agree.</p> <p>16 Q Then I'm going to shift you to the rider</p> <p>17 which comes at the end of this, and it has a</p> <p>18 page two on it. Under Section 7 it indicates</p> <p>19 there that the system by which substantial</p> <p>20 completion -- what the process is. Does this</p> <p>21 describe accurately the process -- and I'll</p> <p>22 paraphrase it for you -- that when the</p> <p>23 construction manager considers the contractor's</p> <p>24 work or a portion thereof substantially</p>
<p style="text-align: right;">Page 31</p> <p>1 Is it true that as an architect the</p> <p>2 drawings and specifications have to conform with</p> <p>3 all applicable federal, state, and local laws</p> <p>4 statutes, ordinances, rules, regulations,</p> <p>5 orders, or other legal requirements, including</p> <p>6 but not limited to all zoning, building,</p> <p>7 occupancy, environmental, and land use laws,</p> <p>8 requirements, regulations, and ordinances</p> <p>9 relating to the construction, use, and occupancy</p> <p>10 of the project existing at the time of</p> <p>11 preparation of the drawings and</p> <p>12 specifications?</p> <p>13 A That's a little long. Is there --</p> <p>14 MS. ELRABADI: Can you break that up?</p> <p>15 MR. O'CONNOR: Sure. You can take a</p> <p>16 look right there.</p> <p>17 THE WITNESS: Just the highlighted</p> <p>18 portion?</p> <p>19 MS. ELRABADI: Can you say for the</p> <p>20 record what you're reading from?</p> <p>21 MR. O'CONNOR: It's group -- it's Migon</p> <p>22 Group Exhibit 1 of the contract, and it's page</p> <p>23 24, Article 13, other conditions and services</p> <p>24 under paragraph 13.4.</p>	<p style="text-align: right;">Page 33</p> <p>1 complete, the construction manager with the</p> <p>2 owner prepares a list of incomplete or</p> <p>3 unsatisfactory items or a punch list? Is that</p> <p>4 what happens?</p> <p>5 A I don't remember that that was the way</p> <p>6 it went.</p> <p>7 Q Okay.</p> <p>8 On this project -- you are saying on</p> <p>9 this project you don't recall it being operated</p> <p>10 in that fashion?</p> <p>11 A Right, I don't recall it being operated.</p> <p>12 I recall we did get a punch list from Jacobs,</p> <p>13 but then we also did our own punch list.</p> <p>14 Q So in a sense you as the architect being</p> <p>15 on-site were doing some of the punch list items</p> <p>16 on behalf of the owner or doing the inspections</p> <p>17 on behalf of the owner?</p> <p>18 A Yes.</p> <p>19 Q In essence in this paragraph you were</p> <p>20 taking on the role or acting as the</p> <p>21 representative of the owner in identifying some</p> <p>22 of the punch list items?</p> <p>23 A Yes.</p> <p>24 Q You were the one consulting with the</p>

9 (Pages 30 to 33)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 34</p> <p>1 construction manager to determine which punch 2 list items needed to be completed or not 3 completed? 4 A What we did was we gave them a list of, 5 you know, some of the items that we had put on 6 our punch list, and they distributed it to the 7 contractors who were responsible for that 8 work. 9 Q Much like -- that's what I'm saying. In 10 this paragraph it's much like the owner would 11 have to do, submit a list to the contractor. 12 You as the owner representative were submitting 13 them on behalf of the owner? 14 A Yes. 15 Q When a certificate of substantial 16 completion is done, it has to be signed by 17 several people; isn't that true? 18 A Yes, typically. 19 Q It has to be signed by -- when you're 20 operating such as at this Stagg School, it has 21 to be signed by the architect, correct? 22 A Yes. 23 Q It has to be signed by the construction 24 manager?</p>	<p style="text-align: right;">Page 36</p> <p>1 are the ones issuing it. So our signature says 2 that the building is substantially complete. 3 Q Then what's the point of having other 4 people sign off on it? 5 A Well, that's a matter -- I mean, I'm not 6 sure why they need to sign off. It's just a 7 matter of them, I assume, showing them that 8 there is a certificate that's issued and they 9 agree to the punch list items, that they have to 10 correct them. 11 Q I'm going to show you what's been 12 previously marked Elaine Fitzgerald Exhibit 13 No. 2. Looking at Exhibit No. 2 it's just a two 14 page certificate of substantial completion 15 regarding this project, correct? 16 A Yes. 17 Q This document in and of itself is 18 actually incomplete because there should be 19 attached to it punch list items that are 20 enumerated that would tell what is left to be 21 done, correct? 22 A Yes. 23 Q Have you seen that document with the 24 punch list attached to it at all in this case?</p>
<p style="text-align: right;">Page 35</p> <p>1 A Yes. 2 Q It has to be signed by the contractor 3 itself? 4 A Yes. 5 Q And it has to be signed by the owner? 6 A Yes. 7 Q Until all of those signatures are in 8 place, you don't have an agreement as to 9 substantial completion; isn't that true? 10 A Well, we give -- we issue the initial 11 document. We send that to the owner and I 12 believe it was the construction manager at the 13 time, and they would have been responsible for 14 getting signatures. 15 Q But until it's actually signed, you 16 don't have a certificate of substantial 17 completion. That's why it's a document that's 18 called a certificate, right? 19 MR. BATTLE: Objection, he asked and 20 answered that question. 21 MR. VELAZQUEZ: Join. 22 BY MR. O'CONNOR: 23 Q Go ahead and answer. 24 A No. I mean, that's the certificate. We</p>	<p style="text-align: right;">Page 37</p> <p>1 A Typically, yes, we would. 2 Q In this case have you -- do you recall 3 seeing that with the attachments to it? 4 A Well, I was the one that issued this, 5 and I put a punch list with it. 6 Q Do you know what would have been 7 contained in that punch list? 8 A I don't remember. 9 Q Are you talking about pages and pages? 10 A Yes, pages. I assume pages. 11 Q I want to look at -- is this the one you 12 submitted in this case that has your name on the 13 bottom? 14 A Yes, it has my name on the bottom. 15 Q It has the date of 5/21/02 under your 16 name, correct? 17 A Yes. 18 Q On page two it has Paschen signing off 19 on it in August of '02. Do you see that? 20 A Yes. 21 Q Do you know why Paschen signed off on it 22 three months after you did? 23 A I don't know. 24 Q And do you know if in this project the</p>

10 (Pages 34 to 37)

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<p style="text-align: right;">Page 38</p> <p>1 owner ever signed off on this certificate?</p> <p>2 A I don't know.</p> <p>3 Q Do you know if Jacob's construction</p> <p>4 manager ever signed off on this certificate?</p> <p>5 A That, I don't know either.</p> <p>6 Q Normally wouldn't a construction manager</p> <p>7 have to sign off on the certificate?</p> <p>8 MR. VELAZQUEZ: Objection. He has asked</p> <p>9 and answered.</p> <p>10 BY MR. O'CONNOR:</p> <p>11 Q Such as this?</p> <p>12 A Well, I mean, we're the ones that start</p> <p>13 it. So when they get it, they are going to have</p> <p>14 to sign off on it, but basically what we do is</p> <p>15 we attach the punch list. So whether it's a</p> <p>16 matter of them signing off on it when the punch</p> <p>17 list is complete or, you know, when they get the</p> <p>18 certificate, I'm not positive when the actual</p> <p>19 sign off takes place.</p> <p>20 Q The construction manager is not</p> <p>21 performing the actual work. They are</p> <p>22 supervising all the construction, correct?</p> <p>23 A Yes.</p> <p>24 Q Their role is in the technical</p>	<p style="text-align: right;">Page 40</p> <p>1 (Whereupon, the record was</p> <p>2 read by the court</p> <p>3 reporter.)</p> <p>4 THE WITNESS: I wouldn't agree with</p> <p>5 that. I mean, we're the ones that initiate this</p> <p>6 document, and we walk through the space, you</p> <p>7 know, to check out everything if it's basically</p> <p>8 complete so the owner can use it. So, I mean,</p> <p>9 since we are the ones issuing the document, when</p> <p>10 we say it's substantially complete, that's the</p> <p>11 date. I mean, that's how I've always done it</p> <p>12 and how we've been taught to do it.</p> <p>13 BY MR. O'CONNOR:</p> <p>14 Q Then what aspect does the construction</p> <p>15 manager punch list play a role in any of this?</p> <p>16 MR. VELAZQUEZ: Objection, foundation.</p> <p>17 THE WITNESS: Well, I mean, they are the</p> <p>18 ones that are on the job. Their punch list in</p> <p>19 addition to ours still requires the contractor</p> <p>20 to complete the work. So they are basically</p> <p>21 also monitoring the work, and if there is</p> <p>22 something that they see that hasn't been done,</p> <p>23 they are responsible -- I guess according to</p> <p>24 whatever that rider was, they are also</p>
<p style="text-align: right;">Page 39</p> <p>1 day-to-day aspects of what's going on in the</p> <p>2 project, right?</p> <p>3 A Yes.</p> <p>4 Q They have to either agree with your</p> <p>5 punch list items or disagree. They may even add</p> <p>6 things to your punch list items; isn't that</p> <p>7 true?</p> <p>8 A That's correct.</p> <p>9 Q So they may have their own punch list</p> <p>10 items in addition to yours?</p> <p>11 A Yes.</p> <p>12 Q So until the construction manager and</p> <p>13 yourself supply a full punch list of items, you</p> <p>14 don't have an agreement as to the substantial</p> <p>15 completion aspect of the project?</p> <p>16 MR. BATTLE: Objection to the term</p> <p>17 agreement, and he has already testified to what</p> <p>18 substantial completion certificate stands for.</p> <p>19 MR. VELAZQUEZ: Join.</p> <p>20 BY MR. O'CONNOR:</p> <p>21 Q Go ahead. You can answer the question.</p> <p>22 A Can you repeat the question?</p> <p>23 MR. O'CONNOR: Sure.</p> <p>24 Can you repeat the question?</p>	<p style="text-align: right;">Page 41</p> <p>1 responsible to provide some sort of punch</p> <p>2 list.</p> <p>3 BY MR. O'CONNOR:</p> <p>4 Q So all this document says is from the</p> <p>5 architectural standpoint that you're issuing</p> <p>6 your aspect of a certificate of substantial</p> <p>7 completion with your punch list document?</p> <p>8 MR. BATTLE: Objection. The document</p> <p>9 speaks for itself.</p> <p>10 MR. VELAZQUEZ: I join.</p> <p>11 THE WITNESS: Basically we're saying</p> <p>12 that the building or the construction area that</p> <p>13 we've issued the certificate of substantial</p> <p>14 completion for, you know, basically says that</p> <p>15 the work is complete to the point where the</p> <p>16 owner can use it for its intended purpose.</p> <p>17 MR. O'CONNOR: We'll get to that in a</p> <p>18 second.</p> <p>19 BY MR. O'CONNOR:</p> <p>20 Q What I'm getting at is this is a</p> <p>21 certificate issued by VOA that it's their</p> <p>22 position that it's reached that point?</p> <p>23 A Yes.</p> <p>24 Q When it lists all these sections in</p>

11 (Pages 38 to 41)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 42</p> <p>1 here, can you tell me what sections this is 2 referring to or what portions of the building? 3 A Which sections? 4 Q Up here. It says project or designated 5 portions shall include, and it has a list of 6 areas. 7 A They are room numbers. 8 Q The area that involved the theatre or 9 the staging area, was that the E section? 10 A I don't recall. 11 Q Was the theatre any of the S sections? 12 A I'm not sure. They may have been rooms 13 that were adjacent. 14 Q Do you recall any of the designation 15 that went for the theatre or staging area? 16 A No, I don't. It's been a while. 17 Q So you don't even know if this document 18 applies to the theatre or stage section area? 19 A The only thing that would lead me to 20 believe it is area PA, performing arts. That 21 was what we, you know, designated performing 22 arts. So PA was the performing arts theatre. 23 Q And what is the first, second, and third 24 floor relating to the performing arts theatre?</p>	<p style="text-align: right;">Page 44</p> <p>1 number on the punch list and they know exactly 2 what area was effected. So I think -- I try to 3 do it where you list the room number on the 4 certificate and with the punch list you have a 5 room number that identifies, you know, if there 6 is any punch list items remaining in that 7 room. 8 Q You said something earlier that's even 9 contained in this document and it's under the 10 exceptions on the -- after the exceptions on the 11 following page. The second line says 12 substantial completion is the stage in the 13 process of the work when the work or 14 designated -- 15 MS. ELRABADI: Counsel, it said 16 progress. 17 MR. O'CONNOR: Sorry. 18 BY MR. O'CONNOR: 19 Q Substantial completion is the stage in 20 the progress of the work when the work or 21 designated portion thereof is sufficiently 22 complete in accordance with the contract 23 documents so the owner can occupy or utilize the 24 work for its intended use. Do you see that?</p>
<p style="text-align: right;">Page 43</p> <p>1 A I believe there was a first, second, and 2 third floor that corresponded to the theatre. 3 Q The theatre itself only has one floor, 4 correct? 5 A Yes, but there is a cat walk system. 6 There is -- I think there was a floor 7 intermediate that may have been adjacent to it. 8 So that's basically what it would entail. 9 Q Is there a reason that there would be 10 specific rooms designated and not other rooms? 11 Does that indicate that there is areas that may 12 not in the performing arts section be 13 substantially completed? 14 A Well, this basically list the areas that 15 this certificate of substantial completion was 16 issued for. 17 Q What I'm getting at is if it was the 18 entire performing arts section, you would just 19 be able to put area of entire performing arts 20 section and not designate the area, right? 21 A Well, typically the reason you do 22 something like this would be so that you have 23 room numbers, and with a punch list someone can 24 take a look now that you've issued the room</p>	<p style="text-align: right;">Page 45</p> <p>1 A Yes. 2 Q Is that your definition of substantial 3 completion? 4 A According to this, yes. 5 Q In this project was that your definition 6 of substantial completion? 7 A Yes. 8 Q So that meant that the owner had to be 9 able to occupy and use the work area for its 10 intended purpose? 11 A Yeah, they can utilize the spaces for 12 what they were designed to. 13 Q In order to do that, you're aware of the 14 fact that the owner has to have an occupancy 15 permit, correct? 16 A I believe so. 17 Q They have to have at least a temporary 18 occupancy permanent, if not a full occupancy 19 permanent? 20 A Okay. 21 Q Correct? 22 A I think so. 23 Q You went through this document in your 24 other deposition, right?</p>

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 46</p> <p>1 A Yes.</p> <p>2 Q I'll show you Moss Exhibit No. 5, which</p> <p>3 is the two-page document from May 20, 2002.</p> <p>4 First I want to note that the</p> <p>5 May 20th document is the day before you signed</p> <p>6 this certificate of substantial completion,</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q Does that jar your memory about when in</p> <p>10 fact -- strike that.</p> <p>11 Do you recall this person actually</p> <p>12 going through the building? Were you there?</p> <p>13 A No, I wasn't.</p> <p>14 Q Did a copy of this document get passed</p> <p>15 along to you?</p> <p>16 A I didn't see it. I know this was asked</p> <p>17 at the last deposition, but I didn't see it,</p> <p>18 no.</p> <p>19 Q So when you issued your certificate of</p> <p>20 substantial completion, you did not have</p> <p>21 knowledge of the document from the Fire</p> <p>22 Protection Division?</p> <p>23 A No.</p> <p>24 Q If you had knowledge of the Fire</p>	<p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: I'm sorry. What was the</p> <p>2 question?</p> <p>3 BY MR. O'CONNOR:</p> <p>4 Q If an owner can't occupy the space,</p> <p>5 would you agree with me that they can't utilize</p> <p>6 it for its intended use?</p> <p>7 MR. VELAZQUEZ: Objection, form and</p> <p>8 foundation.</p> <p>9 THE WITNESS: I wouldn't agree with</p> <p>10 that. I mean, when we go through it I'm issuing</p> <p>11 a certificate of substantial completion based</p> <p>12 on, you know, the design of the building, if</p> <p>13 they built it according to the documents and</p> <p>14 specifications. I'm not there to see if it's</p> <p>15 okay to be occupied, you know, I guess what</p> <p>16 they're doing here. I mean, that's not the</p> <p>17 purpose for us to issue that certificate.</p> <p>18 Q Let's go back a second.</p> <p>19 The performance arts theatre is used</p> <p>20 to put on shows, presentations, correct?</p> <p>21 A Yes.</p> <p>22 Q It's for the general public to come in</p> <p>23 and watch children performing theatre and other</p> <p>24 things on the stage?</p>
<p style="text-align: right;">Page 47</p> <p>1 Protection District's recommendations or what's</p> <p>2 provided in that document, would you have added</p> <p>3 the things on there to your punch list?</p> <p>4 A No.</p> <p>5 Q Looking at that document, it indicates</p> <p>6 that it is an issue for a temporary occupancy</p> <p>7 permit only, correct?</p> <p>8 A Okay.</p> <p>9 Q Is that true?</p> <p>10 A That's what it says there, yes.</p> <p>11 Q What is a temporary occupancy permit?</p> <p>12 A I don't know.</p> <p>13 Q As an architect has that term ever come</p> <p>14 up with you before?</p> <p>15 A No, it hasn't.</p> <p>16 Q Do you understand what an occupancy</p> <p>17 permit is generally?</p> <p>18 A I assume it allows the owner to occupy</p> <p>19 the space.</p> <p>20 Q And if the owner can't occupy the space,</p> <p>21 would you agree with me that it couldn't be used</p> <p>22 for its intended use or for its designated</p> <p>23 use?</p> <p>24 MR. VELAZQUEZ: Objection, foundation.</p>	<p style="text-align: right;">Page 49</p> <p>1 A Yes.</p> <p>2 Q That's its intended use?</p> <p>3 A Yes.</p> <p>4 Q And you understood that when you were</p> <p>5 going through this project?</p> <p>6 A Yes.</p> <p>7 Q If it could not be occupied by students</p> <p>8 or other people safely, would you agree that</p> <p>9 it's not being -- it's not able to be utilized</p> <p>10 for its intended purpose?</p> <p>11 MR. VELAZQUEZ: Objection to form and</p> <p>12 foundation.</p> <p>13 MS. ELRABADI: I join.</p> <p>14 BY MR. O'CONNOR:</p> <p>15 Q Go ahead.</p> <p>16 A What we're doing here I think is</p> <p>17 something different than what the fire district</p> <p>18 is doing.</p> <p>19 Q I want to get back to my question.</p> <p>20 MR. BATTLE: Hold on. Let him finish</p> <p>21 his answer.</p> <p>22 MR. O'CONNOR: That isn't an answer to</p> <p>23 my question.</p> <p>24 MR. BATTLE: But he didn't finish his</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 answer. If he finishes and you determine that</p> <p>2 that's not an answer to your question, you can</p> <p>3 ask him a different question.</p> <p>4 Continue.</p> <p>5 THE WITNESS: Basically, you know, it</p> <p>6 appears that the fire district has the final say</p> <p>7 in saying who can occupy the space and if it can</p> <p>8 be occupied, not me. I mean, the architect --</p> <p>9 we're looking at this as saying substantial</p> <p>10 completion is, you know, they've constructed the</p> <p>11 building and we've got some punch list items but</p> <p>12 the building can be used, you know. I mean,</p> <p>13 obviously this is another layer that I'm not</p> <p>14 involved with. I mean, the owner has to get an</p> <p>15 occupancy certificate, and that doesn't come</p> <p>16 from us.</p> <p>17 MR. O'CONNOR: Can you repeat my</p> <p>18 question so I can get a correct answer to my</p> <p>19 question?</p> <p>20 (Whereupon, the record was</p> <p>21 read by the court</p> <p>22 reporter.)</p> <p>23 MR. VELAZQUEZ: Same objection.</p> <p>24 THE WITNESS: Well, I wouldn't know if</p>	<p style="text-align: right;">Page 52</p> <p>1 Paschen until August?</p> <p>2 MR. BATTLE: Objection, asked and</p> <p>3 answered, and it causes this witness to</p> <p>4 speculate.</p> <p>5 MR. VELAZQUEZ: Join.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. O'CONNOR:</p> <p>8 Q Is that typical of what you've seen in</p> <p>9 the past, a three month --</p> <p>10 A I can't say. I don't recall.</p> <p>11 Q You've now had a chance to look at Moss</p> <p>12 Exhibit No. 5, and I think you've gone through</p> <p>13 it I think you said at the other deposition?</p> <p>14 A Yes.</p> <p>15 Q Paragraph three, if you had been</p> <p>16 provided with this document from the Fire</p> <p>17 Protection District at the time, how would you</p> <p>18 have interpreted paragraph three?</p> <p>19 A I don't know. I wasn't there when they</p> <p>20 were walking through this, so I am not going to</p> <p>21 give an interpretation on it.</p> <p>22 Q You didn't -- you wouldn't be able to</p> <p>23 understand what they mean by provide fall</p> <p>24 protection over orchestra pit when not in use?</p>
<p style="text-align: right;">Page 51</p> <p>1 it was going to be occupied safely or not. I</p> <p>2 don't make that determination.</p> <p>3 BY MR. O'CONNOR:</p> <p>4 Q So when you issue your certificate of</p> <p>5 substantial completion, you're not certifying</p> <p>6 that it could be occupied or used by the owner</p> <p>7 safely?</p> <p>8 A That would be a fair statement.</p> <p>9 Q Even if you attach a list of items to be</p> <p>10 corrected, am I correct that this document</p> <p>11 provides that the failure to include any items</p> <p>12 on such list does not alter the responsibility</p> <p>13 of the contractor to complete all work in</p> <p>14 accordance with the contract documents?</p> <p>15 A Yes, I agree.</p> <p>16 Q So in other words, if you guys miss</p> <p>17 something when you went through on the punch</p> <p>18 list, that doesn't relieve them of the liability</p> <p>19 of doing everything they are suppose to do?</p> <p>20 A Right.</p> <p>21 Q Do you recall in this instance why this</p> <p>22 document was signed by Paschen -- strike that --</p> <p>23 why this document was, Exhibit No. 2 Fitzgerald,</p> <p>24 was signed by you in May and not signed by</p>	<p style="text-align: right;">Page 53</p> <p>1 A I don't know. I don't know what he</p> <p>2 meant by it.</p> <p>3 Q What type of fall protection could you</p> <p>4 provide over an orchestra pit when it's not in</p> <p>5 use?</p> <p>6 A I don't know.</p> <p>7 Q As an architect if I asked you what kind</p> <p>8 of fall protection could I provide over an</p> <p>9 orchestra pit when it's not in use --</p> <p>10 A I don't know.</p> <p>11 Q Do you know anything about -- have you</p> <p>12 ever heard of the term pit covers?</p> <p>13 A Yes, I have.</p> <p>14 Q What are pit covers used for?</p> <p>15 A I mean basically it's an extension of</p> <p>16 the stage.</p> <p>17 Q Would a pit cover provide fall</p> <p>18 protection over the orchestra pit when it's not</p> <p>19 in use?</p> <p>20 A Possibly.</p> <p>21 Q Is there a type of lift or a floor that</p> <p>22 can raise up in an orchestra pit?</p> <p>23 A I don't know too much about them. I</p> <p>24 mean, I know the ones that were eventually</p>

14 (Pages 50 to 53)

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<p style="text-align: right;">Page 54</p> <p>1 installed in the District they just -- it was 2 just a panel that got put in there. 3 Q You would agree with me that doing a 4 performing arts theatre that have orchestra pits 5 is a very specialized area? 6 A Yes. 7 Q And, in fact, that's why, is it your 8 understanding, that VOA had a relationship with 9 Schuler & Shook was because of the special 10 nature of this area? 11 A Yes. 12 Q And you were consulting with Schuler & 13 Shook because of their knowledge of doing 14 theatre or theatre type areas? 15 A Well, I mean, VOA was, not me 16 personally. 17 Q That's what I mean by that, VOA? 18 A Yes. 19 Q And were you conversing with Schuler & 20 Shook even up in 2002 on a regular basis as to 21 their recommendations as it applied to the 22 theatre area? 23 A Well, I mean, at the time I started the 24 project typically what I had talked to them</p>	<p style="text-align: right;">Page 56</p> <p>1 run into them. 2 Q Do you know what an orchestra pit filler 3 platform is? 4 A A platform? 5 Q Yes. 6 A I'm not sure. I know what an orchestra 7 pit filler is. 8 Q I'll show you what I have marked Migon 9 Group Exhibit No. 2 with today's date and ask 10 you to take a look at that. 11 Have you seen that document 12 before? 13 A No, I haven't. 14 Q Take a look at it for a second. 15 Have you had a chance to look at 16 it? 17 A Yes. 18 Q When you came on this project was it 19 your understanding that Schuler & Shook was 20 involved in the project from even the design 21 phase? 22 A Yes. 23 Q And was it your understanding that 24 Schuler & Shook was consulted in the design</p>
<p style="text-align: right;">Page 55</p> <p>1 about was if there was a punch list that needed 2 to be done on the performing arts theatre. If 3 there was a contractor that was finishing it up, 4 they would require under their contract to do a 5 walk-through similar to how we do and, you know, 6 provide a punch list on any items that were 7 unfinished. 8 Q Would you walk through with a 9 representative of Schuler & Shook? Would they 10 go on their own, sometimes together, sometimes 11 not? 12 A It was a little bit of both. I believe 13 their commissioning of the theatre, as they put 14 it, lasted a few days because they checked all 15 the sound equipment. They checked all the 16 lighting, all the equipment that was suppose to 17 be working. You know, so they did all of that. 18 If they were there doing their punch list and I 19 just happened to come in, I would see them; but 20 for the most part it wasn't like, you know, I 21 called them and they tell me they are going to 22 be here and here this day and, you know, we 23 would meet up and I would spend the whole day 24 with them. It was more on occasion that I would</p>	<p style="text-align: right;">Page 57</p> <p>1 phase specifically related to the theatre and 2 the buildout of the theatre area? 3 A Yes. 4 Q You know Bob Shook? 5 A No, I don't. 6 Q He's not the guy generally walking out 7 doing inspections, right? 8 A I don't think so. 9 Q You wouldn't hope so. 10 This document which is dated 11 August 4th of 1999 indicates on page three a 12 proposal for an orchestra pit filler platform, 13 and it gives a price next to it. Do you see 14 that? 15 A Yes, I do. 16 Q In this document do you know what that 17 is referring to? 18 A No, I don't. I mean, I assume it's just 19 a pit filler. 20 Q What is a pit filler? 21 A It's just those panels that they use to 22 fill the area over a stage to extend it. 23 Q Is that the same as a pit cover? 24 A I assume, yes. That's what I envision</p>

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 58</p> <p>1 as a pit filler.</p> <p>2 Q It's something to cover it when it's not</p> <p>3 in use?</p> <p>4 A Correct.</p> <p>5 Q And you don't have any knowledge about</p> <p>6 why it was talked about originally and not used</p> <p>7 later in this particular --</p> <p>8 A No. Like I said, I came on to the</p> <p>9 project in February of '02.</p> <p>10 Q In February of '02 were you attending</p> <p>11 the weekly meetings of the construction</p> <p>12 manager?</p> <p>13 A Whenever I had started, yes, I started</p> <p>14 to attend the meetings.</p> <p>15 Q Would it be yourself and Elaine</p> <p>16 Fitzgerald, both of you, or it depends on who is</p> <p>17 there? How did that work?</p> <p>18 A Sometimes on occasion it would just be</p> <p>19 her. Sometimes it would only be me. Sometimes</p> <p>20 it would be both of us.</p> <p>21 Q And the meetings were held by Jacobs?</p> <p>22 A Yes.</p> <p>23 Q Who from Jacobs do you recall as being</p> <p>24 the person that would lead the meeting?</p>	<p style="text-align: right;">Page 60</p> <p>1 A No. I mean, I recall that Schuler &</p> <p>2 Shook asked for additional services for the pit</p> <p>3 fillers.</p> <p>4 Q Was it something where you had to have</p> <p>5 an additional agreement with the owner that they</p> <p>6 would pay you for it?</p> <p>7 A I don't recall. I mean, I know they did</p> <p>8 get compensated additionally. I mean,</p> <p>9 typically, yes, there would be some sort of</p> <p>10 modification to our contract that would, you</p> <p>11 know, identify the additional services being</p> <p>12 requested for.</p> <p>13 Q And I'll show you what's been marked</p> <p>14 Moss Exhibit No. 9. You've seen that document</p> <p>15 before?</p> <p>16 A It looks like the specification for the</p> <p>17 pit fillers.</p> <p>18 Q Do you recall that Schuler & Shook</p> <p>19 provided the specifications for the pit covers</p> <p>20 after you were requested by the school district</p> <p>21 to look into that?</p> <p>22 A Yes.</p> <p>23 Q And it says -- just to clarify what you</p> <p>24 had said earlier, it says up in the right hand</p>
<p style="text-align: right;">Page 59</p> <p>1 A I think their superintendent's name was</p> <p>2 Gerry.</p> <p>3 Q Meyer?</p> <p>4 A Gerry Meyer, yes, that's him.</p> <p>5 Q Do you recall at the meetings when you</p> <p>6 first came on this project that the need for a</p> <p>7 pit cover was discussed at those meetings?</p> <p>8 A I think when I had started. I don't</p> <p>9 know if it was immediately, but the owner did</p> <p>10 ask us to look into getting pit covers.</p> <p>11 Q And what did you understand -- strike</p> <p>12 that.</p> <p>13 Did you know that the -- why the</p> <p>14 owner was asking you to look into that?</p> <p>15 A No, they just asked us to look into</p> <p>16 it.</p> <p>17 Q Had you known at that time that they had</p> <p>18 asked you -- that you guys had investigated it</p> <p>19 at the beginning of the project?</p> <p>20 A No, I didn't.</p> <p>21 Q When you were asked to look into it, was</p> <p>22 it something that had to be charged additional?</p> <p>23 Was it something already contained in the</p> <p>24 contract? What was it?</p>	<p style="text-align: right;">Page 61</p> <p>1 corner orchestra pit filler, right?</p> <p>2 A Yes.</p> <p>3 Q That's why you interpreted pit filler to</p> <p>4 mean the same thing as that other document?</p> <p>5 A Yes.</p> <p>6 Q Do you know -- this is dated</p> <p>7 April 17, 2002. Do you know was it you yourself</p> <p>8 that actually spurred Schuler & Shook to draft</p> <p>9 this document?</p> <p>10 A Yes.</p> <p>11 Q What did you -- who did you convey it to</p> <p>12 at Schuler & Shook and what was your</p> <p>13 conversation to them?</p> <p>14 A Jeff Childs was the person that I had</p> <p>15 contacted there, and I had just told him that</p> <p>16 the owner was interested in getting the</p> <p>17 specifications and just a layout for the pit</p> <p>18 fillers. So we had asked them to come up with</p> <p>19 their specifications so they can send something</p> <p>20 out to get priced.</p> <p>21 Q And they then in turn produced this</p> <p>22 document?</p> <p>23 A Yes.</p> <p>24 Q And by this document I mean Moss Exhibit</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 No. 9.</p> <p>2 Did they actually produce this</p> <p>3 document or they produced another document that</p> <p>4 VOA kind of conformed into this document?</p> <p>5 A Well, we -- they provided the</p> <p>6 specification, and I didn't see any of this</p> <p>7 stuff. This was -- must have been done by the</p> <p>8 owner. Because my recollection was they had</p> <p>9 asked us to give them the specification and</p> <p>10 basically a drawing of what the pit filler</p> <p>11 looked like. We gave that to the owner, and</p> <p>12 then the owner was going to directly solicit</p> <p>13 bids from manufacturers versus going through the</p> <p>14 general contractor to get, you know, the bids</p> <p>15 for these pit fillers.</p> <p>16 Q At the top it says VOA & Associates,</p> <p>17 Incorporated?</p> <p>18 A Yes.</p> <p>19 Q And then it has certain things written</p> <p>20 underneath it?</p> <p>21 A Yes.</p> <p>22 Q Which portion are you saying wasn't</p> <p>23 yours or was yours?</p> <p>24 A This part here, the interior buildout</p>	<p style="text-align: right;">Page 64</p> <p>1 little bit more modest.</p> <p>2 Q I guess my question is were those price</p> <p>3 numbers passed down to the school?</p> <p>4 A I don't recall. It may have been via</p> <p>5 conversation, you know, just talking with Bob</p> <p>6 Hughes, the owner's rep. I don't know if there</p> <p>7 was anything ever in writing.</p> <p>8 Q Did VOA compare from Schuler & Shook --</p> <p>9 take what they said would be used as a pit cover</p> <p>10 and then look at the plans and make sure it</p> <p>11 would fit or meet in with the design that was</p> <p>12 currently there?</p> <p>13 A No, we wouldn't do that. I mean, we</p> <p>14 relied on Schuler & Shook to, you know, give us</p> <p>15 the specifications and the layout. Then however</p> <p>16 the owner decided to solicit the bids -- I mean,</p> <p>17 typically the company that manufacturers the pit</p> <p>18 covers, they would be the ones -- depending on</p> <p>19 how they planned to make these covers, they</p> <p>20 would have to design them. They would have to</p> <p>21 engineer them. We just kind of provide a</p> <p>22 diagrammatical layout, Schuler & Shook did. We</p> <p>23 just gave the information to the owner, and he</p> <p>24 is the one that sends them out to the</p>
<p style="text-align: right;">Page 63</p> <p>1 portion. We never put that on there.</p> <p>2 Q Because you weren't contracting or</p> <p>3 looking into pit covers for all three schools?</p> <p>4 Is that an accurate statement?</p> <p>5 A Yes, yes, we weren't doing that.</p> <p>6 Q When they originally asked you to look</p> <p>7 into Schuler & Shook, was it about all three</p> <p>8 schools or about one?</p> <p>9 A Well, I believe it was going to be for</p> <p>10 all three schools.</p> <p>11 Q And they came back -- was there ever any</p> <p>12 price discussion as to what this would cost?</p> <p>13 A I don't recall. I mean, my</p> <p>14 understanding was that these pit fillers they</p> <p>15 can, you know, range from the Cadillac model to</p> <p>16 the Ugo model. You know, they can be a</p> <p>17 variety -- made a variety of ways, but I believe</p> <p>18 the District was budget conscious. So they</p> <p>19 probably got one of the lower end models.</p> <p>20 So they had asked us to look into,</p> <p>21 you know, the different types. I thought</p> <p>22 Schuler & Shook may have looked into the kind of</p> <p>23 pricing that they would get for doing like a</p> <p>24 very high end one versus something that is a</p>	<p style="text-align: right;">Page 65</p> <p>1 companies.</p> <p>2 Q I'm going to show you at the end of</p> <p>3 Exhibit No. 9 here there is first an E-mail it</p> <p>4 looks like from Jeff Childs to yourself,</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q It's dated April 17, 2002?</p> <p>8 A Yes.</p> <p>9 Q It says Al please find a copy of the</p> <p>10 spec for review. That's referring to the sheet,</p> <p>11 the first pages of Moss No. 9, correct?</p> <p>12 A Yes.</p> <p>13 Q It then says something about VOA will</p> <p>14 put some kind of front end on this. That's</p> <p>15 talking about VOA putting some kind of markup on</p> <p>16 the cost?</p> <p>17 A Well, it wasn't a markup. What that</p> <p>18 means -- I think Jeff was under the assumption</p> <p>19 that we were going to provide a front end,</p> <p>20 meaning, you know, typically when you send a</p> <p>21 project out to bid you have general conditions</p> <p>22 that the manufacturer or contractor has to abide</p> <p>23 by, and he thought we were going to do that. We</p> <p>24 didn't do that. All I did was I took the</p>

17 (Pages 62 to 65)

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DISPUTE

<p style="text-align: right;">Page 66</p> <p>1 information, the file, and sent it to the 2 District because the District said that they 3 would put their front end on it. So that's what 4 he means by that. 5 Q So the word front end on it means -- 6 refers to the actual contract documents? 7 A It's something that you put in the 8 specifications, terms and conditions, similar to 9 that. 10 Q It has nothing to do with markup? 11 A No, that has nothing to do with markup, 12 not on our end. 13 Q He then asks you to return the signed 14 proposal? 15 A Yes. 16 Q That would be to authorize Schuler & 17 Shook to contract out to do that work? 18 A Yes. 19 Q Then there is an E-mail from yourself 20 back to Jeff Childs, 4/9 of '02 regarding, the 21 pit covers. Was that an E-mail that you 22 drafted? 23 A Yes. I sent him the E-mail telling 24 him -- I think this is the one. Let me just</p>	<p style="text-align: right;">Page 68</p> <p>1 back and forth? 2 A I don't recall. I tried to dig as many 3 of them up as I could. That is what I came 4 up. 5 Q Would you have sent some E-mail at some 6 point that said to Schuler & Shook that the 7 school district decided to pursue them on their 8 own, don't do any more work on the pit covers? 9 A No. The District wanted us to provide 10 the initial design, and really that was it. 11 What Schuler & Shook was contracted to do with 12 that was design the -- come up with the 13 specification, provide a drawing, and then when 14 the pit covers were eventually installed they 15 would go ahead and, you know, go out there to do 16 a punch list on them. They would also look at 17 the shop drawings when they came in from whoever 18 the District decided they were going to, you 19 know, hire for that work. 20 Q So Schuler & Shook would still have some 21 involvement? 22 A Yes, that's correct. 23 Q Even if the school district went out and 24 actually bought it directly from the</p>
<p style="text-align: right;">Page 67</p> <p>1 take a quick look. Basically I had drafted that 2 E-mail to Jeff, you know, identifying that I had 3 a phone conversation with Bob Hughes, and he 4 told us to go with the pit covers basically 5 telling him that he would pay for the additional 6 services for Schuler & Shook. That's why I sent 7 that E-mail to release him. 8 Q This is to release him to go look into 9 the project? 10 A To design the pit fillers, to provide 11 the specifications and the drawing. 12 Q So this one would have proceeded the one 13 that comes up on top? 14 A Yes, correct. 15 Q Then the April 19th E-mail is just Bob 16 Hughes approving the added service for the pit 17 fillers? 18 A Yes, that's correct. 19 Q That's the added service to look into 20 drawing up the specifications that were 21 eventually drawn up? 22 A Yes. 23 Q Was there ever any other E-mails 24 concerning the pit covers that would have went</p>	<p style="text-align: right;">Page 69</p> <p>1 manufacturer, Schuler & Shook has to make sure 2 that it's going to conform or meet into this 3 particular theatre? 4 A Well, that was part of what they had 5 asked the additional services for was that they 6 were going to, you know, provide the 7 specification, give a drawing for the 8 manufacturer to provide pricing on, and they 9 would also look at the shop drawings once the 10 District selected a manufacturer. Then after 11 that when they were all installed, he would come 12 out and take a look at the installation and 13 provide a punch list on the installation if 14 required. 15 Q So after this E-mail, really the 16 District had to wait until Schuler & Shook got a 17 list of manufacturers that they could discuss 18 with about what they needed? 19 A Let me take a look at this. 20 Q The first E-mail you can take a look at 21 it. It points to that? 22 A No. What we ended up doing -- the first 23 E-mail I had asked him to look at the 24 manufacturers, and all he did was he put that</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 inside of the specifications. So all of the 2 information was inside of the specs already. 3 Q Well, let me ask you this. 4 This E-mail here -- oh, I see it. I 5 have listed four acceptable manufacturers? 6 A Yes. So that's what he said. I think I 7 had asked him to provide some manufacturers 8 here, and he listed them directly in the 9 specifications. So these were the four 10 manufacturers that they have worked with, 11 and these manufacturers provide this type of pit 12 filler. 13 Q Do you know if those manufacturers sent 14 back bids? 15 A I don't know. We weren't involved in 16 reviewing any of the bids from the pit filler 17 manufacturers. 18 Q You were involved in the project when 19 the actual pit filler was installed? 20 A Yes, I was still around, yes. 21 Q SECOA was the one that was chosen? 22 A I don't recall which one. 23 Q Do you recall when the pit cover was 24 actually installed?</p>	<p style="text-align: right;">Page 72</p> <p>1 when they selected a manufacturer the 2 manufacturer had to provide a drawing showing 3 how they were going to lay it out, what the pit 4 filler was going to look like and, you know, I 5 think the weights of each panel piece. 6 Q Then you guys would -- 7 A So I sent that to Schuler & Shook. 8 Q Then you would respond back to say that 9 this is adequate or not adequate structurally or 10 architecturally, correct? 11 A Correct. What we would do is they would 12 review the shop drawing, and they would put 13 their stamp on it saying that they have looked 14 at it and, you, know it conforms with the 15 specifications. 16 Q And then after it's installed, you would 17 be doing a punch list thing making sure it's 18 installed properly? 19 A Yes, Schuler & Shook did that. 20 Q On your behalf? 21 A Yes. 22 Q And were you with them when they did 23 that? 24 A No, I wasn't.</p>
<p style="text-align: right;">Page 71</p> <p>1 A No, I don't. 2 Q Was it that summer? Was it at the start 3 of the next school year in 2002? 4 A I thought it was in the summer, maybe 5 towards the end of the summer. 6 Q Just before school opened? 7 A I believe so. 8 Q Was there an issue once the pit cover 9 was ordered from the manufacturer, a certain 10 aspect of getting all the people together who 11 were going to install it or who was going to put 12 it in? 13 A That, I don't know. The District 14 apparently contracted -- they selected a 15 manufacturer, and I don't know if the 16 manufacturer gave them a quote for installation 17 or if they had to hire somebody to install it. 18 So I don't know. 19 Q Do you know if you had to pass on any 20 information to Schuler & Shook about which one 21 was going to be used or how it was going to be 22 used? 23 A The only thing we would have received 24 from the District is a shop drawing. Basically</p>	<p style="text-align: right;">Page 73</p> <p>1 Q Would they have reported back to you 2 after they did that? 3 A Yes. 4 Q Then you would report back to the owner 5 that it meets with your approval or doesn't or 6 whatever the punch list items are? 7 A Yes. 8 Q You were aware of Regalado falling in 9 the pit area at or near the time that it 10 happened? 11 A Yes. 12 Q How did you become aware of it? 13 A I just heard it from the owner. 14 Q And did you know that he had fallen from 15 the stage area down into the pit? 16 A Well, that's what they told us. 17 Q And did the owner express some concern 18 about safety at that point of the pit not being 19 covered? 20 A No. 21 Q Did you have any concern about the pit 22 not being covered having heard that somebody 23 fell in there? 24 A Well, I mean, I knew that they were</p>

19 (Pages 70 to 73)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 74</p> <p>1 looking at pit fillers, so I didn't have any 2 concern. 3 Q Was one of the reasons for the pit's 4 cover a safety issue so people wouldn't fall in 5 there? 6 A That, I don't know. Nobody told us that 7 it was a safety issue. The District just asked 8 us to look into get pricing, and we looked at 9 getting the design for it. 10 Q After you had heard that man fell, did 11 you consider the pit cover, in addition to part 12 of the design, also a safety issue? 13 A No. 14 Q Did you hear about a student falling in 15 during a graduation ceremony, falling into the 16 pit? 17 A No, I didn't. 18 Q After Mr. Madden fell into the pit, did 19 you hear about his incident? 20 A I did hear from the owner's rep, Bob 21 Hughes. 22 Q And what was said by Bob Hughes? 23 A I mean, basically he just fell in there. 24 I don't know. I think he backed into it or</p>	<p style="text-align: right;">Page 76</p> <p>1 A I mean, I don't think that's the case. 2 Sometimes, you know, a code mandates you have a 3 certain amount of accessible bathrooms. 4 Sometimes because you anticipate -- a design 5 makes sense doing it this way and you put an 6 extra one in. I don't think safety is what 7 we're talking about when we're designing 8 something. It's basically applicable code, 9 accessibility, things of that nature. 10 Q As part of this project did Consolidated 11 High School District 230 have its own safety 12 rules and procedures? 13 A I'm not aware of that. 14 Q When you came on the job, you were not 15 made aware that you needed to follow the school 16 district's safety provision? 17 A No. 18 Q You had meetings with Elaine Fitzgerald, 19 correct? 20 A When, during the project? 21 Q During the project -- 22 A Yes. 23 Q -- when she was there. 24 And you mentioned you went to the</p>
<p style="text-align: right;">Page 75</p> <p>1 something like that. 2 Q Was there any issue of safety that came 3 up at that point? 4 A No. 5 Q In designing a project as an architect, 6 is one aspect of what you're considering is that 7 you're doing a safe design? 8 A Well, I don't think that's what we 9 consider. I mean, what we're asked to do is 10 designed by code. 11 Q And the code regulations are designed to 12 comply with safety? It's one of the issues of 13 the code? 14 A I don't know. I can't comment on it 15 because I'm not a code writer. 16 Q When you design things, sometimes you 17 meet the codes, sometimes you exceed the code, 18 correct? 19 A That's true. 20 Q And is some of the reasons that you 21 exceed the code is because based on an 22 architect's knowledge, training, and experience 23 you feel that a particular design is a safer 24 aspect to approach on a case?</p>	<p style="text-align: right;">Page 77</p> <p>1 progress meetings, correct? 2 A Yes. 3 Q At the progress meetings themselves some 4 of the issues that would come up are safety. 5 Some of the issues would be progress of the 6 work? 7 A I believe so, yes. 8 Q With Elaine Fitzgerald the issues -- 9 what would you be two talking about when you had 10 your meetings? 11 A Typically it was just stuff that was 12 observed in the field, whether they are working 13 on this area or that area or if there was a 14 question that would come up, you know, if there 15 was a conflict with the drawings or, you know, 16 just something in the field. 17 Q You didn't have set times to do that. 18 It would come up when you needed to discuss 19 things? 20 A Right. We knew when our weekly meetings 21 were and who was going to cover or if we were 22 both going. So, you know, if she was there and 23 she came back to the office, she would basically 24 tell me, you know, what happened or if there was</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 any issue that came up.</p> <p>2 Q During the weekly -- other than the</p> <p>3 weekly progress meetings, did you go to any</p> <p>4 other meetings?</p> <p>5 A Well, we had an owner's meeting every</p> <p>6 Wednesday morning typically.</p> <p>7 Q What was addressed at the owner's</p> <p>8 meetings every Wednesday morning?</p> <p>9 A It varied. Basically Jacobs Facilities</p> <p>10 was there with us. Sometimes the schedule was</p> <p>11 discussed. Sometimes, you know, the budget was</p> <p>12 discussed, but it was mostly like those items.</p> <p>13 Q Was anybody else besides VOA, Jacobs,</p> <p>14 and the owner at those weekly meetings?</p> <p>15 A Just those three people.</p> <p>16 Q And at those meetings was the issue of</p> <p>17 the pit covers ever discussed?</p> <p>18 A I don't recall.</p> <p>19 Q They may or may not have been?</p> <p>20 A They may or may not have been.</p> <p>21 Q Were issues of safety or concern that</p> <p>22 the owners had for students or the project or</p> <p>23 what was going on raised at those Wednesday</p> <p>24 meetings?</p>	<p style="text-align: right;">Page 80</p> <p>1 THE WITNESS: I just knew he was the</p> <p>2 superintendent on the job, that he was more or</p> <p>3 less coordinating all of the contractors.</p> <p>4 BY MR. O'CONNOR:</p> <p>5 Q In terms of if an issue came up about</p> <p>6 safety, was it him who would address it?</p> <p>7 A I don't know.</p> <p>8 MR. VELAZQUEZ: Objection to foundation</p> <p>9 and form.</p> <p>10 BY MR. O'CONNOR:</p> <p>11 Q He was doing all of the scheduling?</p> <p>12 MR. VELAZQUEZ: Same objection.</p> <p>13 THE WITNESS: I believe. I think Jacobs</p> <p>14 was. I'm not sure if him directly was doing</p> <p>15 that.</p> <p>16 BY MR. O'CONNOR:</p> <p>17 Q We will talk about Jacobs in general</p> <p>18 instead of him in particular.</p> <p>19 Was Jacobs doing all of the</p> <p>20 scheduling of the work?</p> <p>21 A Yes.</p> <p>22 Q Coordinating the contractors?</p> <p>23 A Yes, that was my understanding.</p> <p>24 Q If an issue arose between two different</p>
<p style="text-align: right;">Page 79</p> <p>1 A Not that I recall, no.</p> <p>2 Q Was safety a big concern when school was</p> <p>3 going on?</p> <p>4 A I don't know. I mean, we had nothing to</p> <p>5 do with it, so it may have been but not, you</p> <p>6 know, with VOA.</p> <p>7 Q When you were at the meetings, you</p> <p>8 weren't hearing about the school saying we have</p> <p>9 got a lot of students around, we want to make</p> <p>10 sure it's safe at this particular aspect of the</p> <p>11 project? You didn't hear those at those</p> <p>12 meetings?</p> <p>13 A No. Typically where the construction</p> <p>14 was going on those areas were locked off.</p> <p>15 Q Do you need a break?</p> <p>16 A I can use water.</p> <p>17 (Recess taken.)</p> <p>18 BY MR. O'CONNOR:</p> <p>19 Q During the construction project was it</p> <p>20 your understanding that the person who was</p> <p>21 running the actual physical part of the job was</p> <p>22 Gerry Myers?</p> <p>23 MR. VELAZQUEZ: Objection to foundation,</p> <p>24 form.</p>	<p style="text-align: right;">Page 81</p> <p>1 sets of contractors, was it Jacobs that would</p> <p>2 resolve it?</p> <p>3 A It depended on what it was.</p> <p>4 Q If two people are scheduled to work in</p> <p>5 the same area at the same time?</p> <p>6 A That was theirs.</p> <p>7 Q If one person was doing something that</p> <p>8 interfered with another person's job, would it</p> <p>9 be Jacobs that would take care of that?</p> <p>10 A Yeah, they would have to resolve that.</p> <p>11 Q In other words, if you were walking</p> <p>12 through the building and someone came up to you</p> <p>13 and said, hey, that guy is working over my head</p> <p>14 and dropping something on my head, you would</p> <p>15 point and say go talk to Jacobs?</p> <p>16 A I didn't know who was responsible for</p> <p>17 that, but I would just tell them that it's not</p> <p>18 my job.</p> <p>19 Q Would you point them or direct them to</p> <p>20 somebody?</p> <p>21 A I don't know. I mean, I wouldn't. I'm</p> <p>22 not sure who -- for that type of question who</p> <p>23 dealt with it.</p> <p>24 Q You wouldn't say go see your foreman, go</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 see Jacobs, go see somebody else?</p> <p>2 A Everybody knew who the responsible party</p> <p>3 was for coordinating everything, so I would</p> <p>4 assume they would know who to talk to.</p> <p>5 Q When you say everyone knew, who did</p> <p>6 everyone know, Jacobs?</p> <p>7 A Yeah, everyone knew Jacobs was the CM.</p> <p>8 Q Did Jacobs walk around with a white</p> <p>9 hat?</p> <p>10 A Yes. They did have something that said</p> <p>11 Jacobs on their hard hat.</p> <p>12 Q In other words, when they were walking</p> <p>13 around everyone took notice and knew who they</p> <p>14 were?</p> <p>15 A Yes.</p> <p>16 Q Kind of puts a mad scramble among all of</p> <p>17 the younger guys?</p> <p>18 A Maybe.</p> <p>19 Q Did you walk around with Jacobs at</p> <p>20 times?</p> <p>21 A Yes, at times we did.</p> <p>22 Q What did you walk around with Jacobs</p> <p>23 for?</p> <p>24 A If they had a question for us, if there</p>	<p style="text-align: right;">Page 84</p> <p>1 because they thought it was up to a certain</p> <p>2 code? They would consult with you?</p> <p>3 A Yes, they typically would.</p> <p>4 Q Was it your understanding that one of</p> <p>5 the job duties of Jacobs is if they identified a</p> <p>6 code or an issue such as that that they would</p> <p>7 consult with you?</p> <p>8 MR. VELAZQUEZ: Objection, foundation.</p> <p>9 THE WITNESS: Yeah, I don't know what</p> <p>10 their contract involved.</p> <p>11 BY MR. O'CONNOR:</p> <p>12 Q I am just asking your general</p> <p>13 understanding of what they were doing on the</p> <p>14 project. Was it your understanding that if they</p> <p>15 came across a code issue or other issues similar</p> <p>16 to that, that they would address that with</p> <p>17 you?</p> <p>18 MR. VELAZQUEZ: Same objection.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. O'CONNOR:</p> <p>21 Q My understanding is you didn't read any</p> <p>22 contracts in this case, right?</p> <p>23 A No, I didn't.</p> <p>24 Q Did anyone tell you what your duties and</p>
<p style="text-align: right;">Page 83</p> <p>1 was something on the drawings that may not have</p> <p>2 worked in the field, they would ask us about</p> <p>3 something, things like ceiling height conflict,</p> <p>4 for example.</p> <p>5 Q A modification that needed to be made</p> <p>6 that couldn't be accounted for at the time that</p> <p>7 you did your drawings, that's what you're</p> <p>8 talking about? A modification that would need</p> <p>9 to be made in the field that couldn't have been</p> <p>10 accounted for when you were doing your</p> <p>11 drawings?</p> <p>12 A Correct, correct.</p> <p>13 Q If something -- if Jacobs had the</p> <p>14 opinion that something you designed didn't meet</p> <p>15 up with a certain code, would they bring that to</p> <p>16 your attention?</p> <p>17 A I would hope so.</p> <p>18 Q You would expect them to?</p> <p>19 A I'm not saying that we would expect them</p> <p>20 to, but if they did, you know, I would hope they</p> <p>21 would.</p> <p>22 Q In other words, they wouldn't just go</p> <p>23 ahead and change something or you wouldn't</p> <p>24 expect them to go ahead and change something</p>	<p style="text-align: right;">Page 85</p> <p>1 responsibilities were on this project?</p> <p>2 A Nobody told me. I mean, on the previous</p> <p>3 project that I worked on for the Department of</p> <p>4 Natural Resources Office I, you know, was doing</p> <p>5 the construction administration. So I was doing</p> <p>6 on-site observation, and just the experience and</p> <p>7 everything I learned from that project I carried</p> <p>8 it on to this one.</p> <p>9 Q Do your duties and responsibilities as a</p> <p>10 field person doing site inspections basically</p> <p>11 remain the same?</p> <p>12 A Yes.</p> <p>13 Q Who assigned you to be on this</p> <p>14 project?</p> <p>15 A The principal in charge, Paul Hansen.</p> <p>16 Q Did Paul Hansen come to the site?</p> <p>17 A When I was on it, I don't recall him</p> <p>18 coming, no.</p> <p>19 Q When you say he is the principal, he was</p> <p>20 the licensed architect over the project?</p> <p>21 A Well, his -- the way our office is I</p> <p>22 guess broken up is a principal heads a studio,</p> <p>23 and the studio heads ten or fifteen people or</p> <p>24 whatever it is. Sometimes they either practice</p>

22 (Pages 82 to 85)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 86</p> <p>1 just education or they practice the health care. 2 So he was the principal in charge of, you know, 3 this education project. 4 Q And is he a licensed architect? 5 A Yes, he is. 6 Q Are all the principals over the various 7 sections licensed architects? 8 A Yes, they are. 9 Q One of the requirements of the State 10 requirement is that you operate under a licensed 11 architect as a nonlicensed architect, correct? 12 A Yes. 13 Q So if you had a question or concern, you 14 would go back to Paul Hansen, correct? 15 A Yes. 16 Q Did any questions or issues come up when 17 you were on this project where you had to 18 actually go back to Paul Hansen? 19 A There were but, I mean, I don't recall 20 exactly what they were. I mean, him and I 21 talked regularly. I would give him updates on 22 how the project is going and, you know, things 23 of that nature. 24 Q So he was at least aware of issues and</p>	<p style="text-align: right;">Page 88</p> <p>1 asking for money and I'm just going to ask the 2 owner for it. 3 Q Who prepared the documents relative to 4 that? Did that come from Paul or did that come 5 from you? 6 A I don't know. 7 Q You didn't do it? 8 A No, I didn't do it. 9 Q Would there normally have to be some 10 kind of documents authorizing that? 11 A Authorizing what? 12 Q The additional work or the additional 13 looking into the thing or did that come directly 14 from Schuler & Shook or how did that work? 15 A Schuler & Shook asked us. They sent a 16 proposal to us of how much it was going to be 17 for doing that work. 18 Q And then you would have to submit your 19 own proposal back to the owner? 20 A Yes. 21 Q And what you're telling me is that 22 somebody at your company did that but it wasn't 23 you? 24 A Yeah. I assume somebody did, yes, but</p>
<p style="text-align: right;">Page 87</p> <p>1 things going on with the project? 2 A Yes. 3 Q Was he aware of the issue of the pit 4 covers coming up? 5 A Yes, he was aware of that and that the 6 owner had asked us to look into getting pit 7 covers for the school. 8 Q Was it your understanding that Paul 9 Hansen was on this project from day one? 10 A Yes. 11 Q And Paul Hansen never expressed to you 12 anything about the pit covers ever coming up 13 before that day? 14 A No, no. 15 Q Was he the one that directed you as to 16 how to like charge for the additional cost, how 17 to approach it in terms of the pit cover? 18 A Well, initially what happened was when I 19 had asked Schuler & Shook about it, they are the 20 ones that asked us for the additional services. 21 So they are the ones that initiated it. 22 Q So then you had to go back to Paul and 23 say how do I handle this? 24 A Yes. I just asked him. I said they are</p>	<p style="text-align: right;">Page 89</p> <p>1 it wasn't me. 2 Q Can you tell me in August of 2002 what 3 work was being performed in the theatre area? 4 A I don't remember. I don't know if there 5 is anything going on at Stagg. I mean towards 6 that time I was more involved with Sandburg 7 because that was one of the last schools that 8 was being completed. 9 Q Am I correct then you don't recall 10 exactly what work was going on in August? 11 A That's a correct statement. I don't 12 recall. 13 Q If the contractors were in there, they 14 would have been doing the things that were 15 listed on the items that were enumerated that 16 needed to be completed in that area? 17 A Right. If they were there, they were 18 probably completing punch list items. 19 Q Can a punch list item -- am I correct 20 that some punch list items may take a few 21 minutes and some may take days to correct? 22 MR. BATTLE: Objection. That calls for 23 speculation. 24 MR. VELAZQUEZ: Join.</p>

23 (Pages 86 to 89)

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FBFK 1693
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Page 90

1 THE WITNESS: I don't know. I mean, I'm
 2 sure it depends on what it is.
 3 BY MR. O'CONNOR:
 4 Q I'm asking your experience.
 5 A Typically, no. We have had punch lists
 6 that have been out there for a year and they
 7 haven't been done. If you say a few minutes, I
 8 would say no.
 9 Q What I'm getting at is they are not
 10 something where somebody can necessarily come
 11 back in one day and fix a few things and be
 12 done --
 13 MR. BATTLE: Objection, calls for
 14 speculation.
 15 MR. O'CONNOR: Can I finish my question?
 16 MR. BATTLE: Yes, you can.
 17 BY MR. O'CONNOR:
 18 Q It can take a period of time, correct?
 19 MR. BATTLE: Objection. It calls for
 20 speculation as to which punch list items you're
 21 talking about.
 22 MR. VELAZQUEZ: Join.
 23 THE WITNESS: It depends. I don't know.
 24 It depends on what it is, and it depends on how

Page 91

1 long the list is.
 2 BY MR. O'CONNOR:
 3 Q You had a chance to -- did I show you
 4 that document? I'm going to show you what I've
 5 previously marked Fitzgerald Exhibit No. 1, and
 6 it's dated May 12, 2002. It has your name on
 7 it.
 8 Do you recognize that document?
 9 A I don't recall, but I'm sure if it's got
 10 my name on it I must have gotten a copy of it.
 11 Q This is a job site report done by
 12 Schuler & Shook.
 13 A Okay.
 14 Q Correct?
 15 A Yes.
 16 Q And they list 62 items, if I remember my
 17 numbers correctly, some of which have
 18 subsections to them that needed to be completed
 19 in the theatre area.
 20 A Okay.
 21 Q Is that correct?
 22 A Yes.
 23 Q Do you know what caused them to generate
 24 this particular document, or was this just one

Page 92

1 of their normal field inspections?
 2 A No. I believe -- what's the date on
 3 this? This may have been in preparation for the
 4 punch list. We would have -- if the contractor
 5 told us that they are completed with the space
 6 and we've got requests by Jacobs to come and do
 7 our punch list, we would ask them to do their
 8 punch list because that was part of their
 9 contract to do the punch list in the performing
 10 arts theatres.
 11 Q And to provide the specific list of what
 12 they felt needed to be completed?
 13 A Okay, yes.
 14 Q Under Number 11 it talks about steps in
 15 the house are difficult to see. Due to carpet
 16 pattern demarcation lines must be added on to
 17 the steps to differentiate the change in
 18 elevations. Do you see that?
 19 A Yes, I do.
 20 Q Do you know what that's referring to?
 21 A I think it's the stairs that walk down
 22 the aisles in the theatre.
 23 Q Was there an issue about being able to
 24 decipher the steps due to lighting and the color

Page 93

1 of the stairs?
 2 A According to this, yes.
 3 Q It indicates -- under Section 30 it says
 4 fluorescent work lights, fixture types SN, in
 5 the orchestra pit must be installed. Do you
 6 know what that is referring to?
 7 A I guess the work lights in the orchestra
 8 pit.
 9 Q Were there general lights, work lights,
 10 both types?
 11 A I don't know. I mean, they designed the
 12 lighting also for the pit. So I don't remember
 13 if they were work lights or, you know, general
 14 lights or what.
 15 Q Because if -- was there times if you
 16 turn on the lights you could make the orchestra
 17 pit go dark?
 18 A I believe so.
 19 Q When you walked through did you rely on
 20 Schuler & Shook as to the lighting issues,
 21 whether they were adequate, whether there was
 22 sufficient lighting in the theatre area?
 23 A Well, I relied on them to provide a
 24 punch list depending on what they designed. I

24 (Pages 90 to 93)

Page 94

1 mean, if they designed -- I believe they also
2 provided the lighting design. So they were the
3 ones that would, you know, identify if a light
4 wasn't installed correctly or if it wasn't
5 installed at all.

6 Q Are there times on projects where you
7 would go through and there is a lighting
8 installation pattern, and when it actually gets
9 installed you look back at it and the lighting
10 is not adequate or sufficient? Has that
11 happened to you on any project?

12 A No.

13 Q Generally that's -- on a project you or
14 someone at your company is creating the lighting
15 configuration?

16 A We typically would get a lighting
17 designer, and they would run the calculations on
18 how much light is being provided by a certain
19 type of fixture or typically now the lighting
20 manufacturers all you do is you give them your
21 drawing file and they will tell you exactly if
22 you have the correct amount of light or not.

23 Q Did you ever go through and walk through
24 the theatre area around this time to determine

Page 95

1 whether the lighting was adequate or not?

2 A No. I wouldn't know what to look for
3 with the lighting because I didn't design it. I
4 mean, I relied on Schuler & Shook to provide
5 that type of information on the punch list.

6 Q As you walked through did any -- did you
7 have any lighting issues that stuck out in your
8 mind?

9 A No. I mean, when we were walking
10 through I recall the lights being on, so I don't
11 know. I didn't see any, but then again I'm not
12 a theatre expert.

13 Q Did you actually -- when you walked
14 through, would you walk up on to the stage near
15 the pit area?

16 A Yes.

17 Q Was that a regular part of your walk
18 that you would do?

19 A What do you mean regular walk?

20 Q When you're doing your walk-throughs and
21 you're going through on the project, would you
22 regularly walk up on the stage? Would you walk
23 down in front of it?

24 A I would just be in the theatre if I

Page 96

1 needed to be in there if they are doing a punch
2 list or something like that. I wouldn't walk
3 through the theatre specifically just to get
4 from point A to point B.

5 Q What I'm getting at is unless you're
6 looking for something on a punch list that's up
7 on the stage area itself, you wouldn't have
8 occasion to be up on the stage?

9 A Correct.

10 Q Do you recall when the last time before
11 August 19th of 2002 you would have been up on
12 that stage area itself?

13 A I don't recall.

14 Q Do you recall that there was temporary
15 railings put up by the construction people at
16 some point during the project, two by fours, to
17 block off the orchestra pit from the stage
18 area?

19 A I don't remember that.

20 Q Do you recall there being flower pots
21 put up along the area of the orchestra pit to
22 block off from the stage area?

23 A No, I don't.

24 Q Have you had a chance to look at

Page 97

1 previously some of the photos of that?

2 A I saw some photos at the last deposition
3 but I don't know -- I thought it was just some
4 two by fours or something.

5 Q I'm showing you what was previously
6 marked Madden Exhibit No. 2 with a date of 12/11
7 of '03. Do you see that -- you recognize that
8 photo?

9 A That's the theatre, yes.

10 Q Do you recognize those two by fours and
11 the caution tape?

12 A You know, I think I do, yeah. I recall
13 that -- I don't remember if it was at Stagg, but
14 I thought I recalled that they did do something
15 similar to that.

16 Q At the other projects that you were on
17 did they do similar blocking off of the pit area
18 when they were working on this?

19 A Well, that's what I don't remember if it
20 was over here or if it was at one of the
21 schools.

22 Q That's what I'm asking you. At the
23 other schools did they normally block off the
24 pit area when they were working on the stage,

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 the contractors?</p> <p>2 A I don't remember.</p> <p>3 Q Let me show you what's been previously</p> <p>4 marked as Madden Exhibit No. 3 with a date of</p> <p>5 12/11/03. Do you recognize that photo?</p> <p>6 A No, I don't.</p> <p>7 Q Do you recognize the wood at least in</p> <p>8 the pit area or the wood shown in that picture</p> <p>9 as what surrounded the pit area?</p> <p>10 A Yes. That's the trim that was put</p> <p>11 around it.</p> <p>12 Q And was there any sort of lip between</p> <p>13 the pit area and the stage area such before you</p> <p>14 went off the stage area into the pit?</p> <p>15 A What do you mean a lip?</p> <p>16 Q Any sort of raised portion, a lip, or</p> <p>17 was it just straight across?</p> <p>18 A No, I think it was just straight</p> <p>19 across.</p> <p>20 Q I'm showing you flowers that I'll tell</p> <p>21 you that have been described or placed along the</p> <p>22 area between the stage and the pit area during</p> <p>23 one of the ceremonies that were going on by the</p> <p>24 school. You don't ever recall seeing that?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q And it was taller than you?</p> <p>2 A Yes, it was.</p> <p>3 Q If you put your hand up, was it even</p> <p>4 taller than putting your hand up?</p> <p>5 A That, I don't recall.</p> <p>6 Q It was in excess of six feet?</p> <p>7 A I would say yes.</p> <p>8 Q Was it more or less than ten feet, if</p> <p>9 you know?</p> <p>10 A I don't remember.</p> <p>11 Q Looking at Madden Exhibit No. 11, by</p> <p>12 looking at the photograph can you tell what</p> <p>13 stage of the construction or what time of year</p> <p>14 that photo was taken?</p> <p>15 A I don't know. I mean, it looks like --</p> <p>16 well, they have got everything covered, so they</p> <p>17 might have been cleaning it or in the final</p> <p>18 stages of it.</p> <p>19 Q You would be guessing at that point?</p> <p>20 A Yeah, I would be guessing.</p> <p>21 Q At least you know it was the stage of</p> <p>22 construction where they had put in the chairs,</p> <p>23 correct?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 A No, I don't.</p> <p>2 Q Was there any -- strike that.</p> <p>3 In order to put in the pit cover,</p> <p>4 there wasn't any structural change that needed</p> <p>5 to be made to the original pit itself or the</p> <p>6 area around it, am I correct?</p> <p>7 A Well, I don't believe anything</p> <p>8 structural. I think what they ended up having</p> <p>9 to do is just take some of the trim off to be</p> <p>10 able to install the filler, and then there was</p> <p>11 some sort of a support that was put around the</p> <p>12 entire perimeter for the pit filler to sit on.</p> <p>13 Q That support would go somewhere on the</p> <p>14 bottom of the trim or the middle of the trim</p> <p>15 somewhere along to hold it up?</p> <p>16 A I don't remember exactly where. I mean,</p> <p>17 it was somewhere -- I think they maybe had to</p> <p>18 modify the trim to be able to put that filler</p> <p>19 in.</p> <p>20 Q The distance from the top of the theatre</p> <p>21 to the bottom of the pit, how high was it?</p> <p>22 A I don't remember the actual height.</p> <p>23 Q Were you down in the pit area?</p> <p>24 A Yes, I was.</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. VELAZQUEZ: Objection. He said that</p> <p>2 it could be either cleaning or towards the</p> <p>3 end.</p> <p>4 THE WITNESS: I mean, they had</p> <p>5 everything covered up. They could have been</p> <p>6 cleaning it.</p> <p>7 BY MR. O'CONNOR:</p> <p>8 Q You described for me some of the people</p> <p>9 that you had contact with as you were on the</p> <p>10 project. Did you ever have contact with any of</p> <p>11 the building engineers or building custodians?</p> <p>12 A No, I didn't.</p> <p>13 Q You don't know Mr. Madden?</p> <p>14 A No, I don't.</p> <p>15 Q If he walked in the door, you wouldn't</p> <p>16 recognize him?</p> <p>17 A No, I wouldn't.</p> <p>18 Q Were there occasions where you had to</p> <p>19 have -- get access to certain portions of the</p> <p>20 building or get information about certain</p> <p>21 portions of the building from the building</p> <p>22 itself -- the school itself?</p> <p>23 A There may have been, but if I did I</p> <p>24 would just speak to the principal or whoever was</p>

26 (Pages 98 to 101)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 102</p> <p>1 the contact person.</p> <p>2 Q Do you remember who that was?</p> <p>3 A No, I don't.</p> <p>4 Q So your conversations with that person</p> <p>5 would have been very limited?</p> <p>6 A Yes.</p> <p>7 Q Who else as you were on this project did</p> <p>8 you have contact with other than the people that</p> <p>9 you've named so far for me that you can</p> <p>10 recall?</p> <p>11 A From Jacobs it would have been John</p> <p>12 Szott I think his name was and then --</p> <p>13 Q What was his position?</p> <p>14 A I think he dealt more with the contract</p> <p>15 side of the project, you know, and possibly some</p> <p>16 scheduling. I think Ken was the project</p> <p>17 manager, Ken Ruckus or something like that. I</p> <p>18 mean, I guess from Jacobs' side that was really</p> <p>19 it.</p> <p>20 Q Did you deal with anyone from Paschen's</p> <p>21 side?</p> <p>22 A Matt mainly, Matt Moss.</p> <p>23 Q How often would you discuss things with</p> <p>24 him when you were on the project?</p>	<p style="text-align: right;">Page 104</p> <p>1 appear to have any specialized knowledge in the</p> <p>2 area of theatre or how to design?</p> <p>3 A No, I don't recall.</p> <p>4 Q Am I correct that the school was relying</p> <p>5 on VOA to provide their consultation on the</p> <p>6 theatre and then VOA in turn was relying on</p> <p>7 Schuler & Shook?</p> <p>8 A Yes.</p> <p>9 Q If Schuler & Shook would have</p> <p>10 recommended to VOA to put in the pit cover for</p> <p>11 safety reasons, would you have passed that</p> <p>12 information along to the school?</p> <p>13 A If they said something to us, sure.</p> <p>14 Q If there was a safety issue concerning</p> <p>15 having a pit cover or not having a pit cover,</p> <p>16 would you have expected Schuler & Shook to bring</p> <p>17 that to your attention?</p> <p>18 A Well, I would expect that they would</p> <p>19 have provided us a design that met code. I</p> <p>20 mean, whether it's safe or not, I don't know.</p> <p>21 We contracted them for us to get a design from</p> <p>22 them that met the code, and that's what we would</p> <p>23 have expected from them.</p> <p>24 Q Am I correct that what you're telling me</p>
<p style="text-align: right;">Page 103</p> <p>1 A Not too often. I think more so when --</p> <p>2 from what I recall, Matt was left on the project</p> <p>3 to kind of finish up the punch list items and,</p> <p>4 you know, as the project was slowing down they</p> <p>5 kind of kept him as the contact guy from</p> <p>6 Paschen. So sometimes, you know, if he had</p> <p>7 questions, we would walk the building together.</p> <p>8 If he had questions on the punch list, you know,</p> <p>9 about a certain item that he may have not</p> <p>10 understood, he would contact me or I would meet</p> <p>11 with him, but that was basically about it.</p> <p>12 Q So sometimes you would discuss issues</p> <p>13 concerning the punch list items with Matt Moss</p> <p>14 directly. Sometimes it would go through</p> <p>15 Jacobs?</p> <p>16 A Yes.</p> <p>17 Q Was that mainly the person you dealt</p> <p>18 with from Paschen?</p> <p>19 A Yes.</p> <p>20 Q Was there anybody else?</p> <p>21 A I don't recall. I mean, he is the one I</p> <p>22 remember most because I probably had the most</p> <p>23 dealings with him.</p> <p>24 Q Did the school officials you dealt with</p>	<p style="text-align: right;">Page 105</p> <p>1 is that as long as your design meets code there</p> <p>2 is no concern on the part of VOA about safety?</p> <p>3 A Correct.</p> <p>4 Q Do you understand the code provisions to</p> <p>5 be the minimum requirements that you need to</p> <p>6 follow in order to meet the guidelines of that</p> <p>7 particular agency?</p> <p>8 A Yes.</p> <p>9 Q Was it ever -- strike that.</p> <p>10 You wouldn't know what the school</p> <p>11 district asked in terms of the level of</p> <p>12 compliance with those codes that they wanted in</p> <p>13 the beginning because you weren't involved with</p> <p>14 that --</p> <p>15 A Right, I wasn't around.</p> <p>16 Q Back to Fitzgerald No. 1 in terms of the</p> <p>17 62 items listed in this job report. Would you</p> <p>18 know the time it would take to complete all of</p> <p>19 these items?</p> <p>20 A No, I wouldn't know.</p> <p>21 Q Do you know when the punch list items in</p> <p>22 the theatre area were actually completed?</p> <p>23 A No, I don't.</p> <p>24 Q Because you left by that time?</p>

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 A Yeah. I mean, we did whatever we could 2 up to a certain point, and then when the owner 3 told us he wasn't going to pay us anymore money 4 and our contract ran out, that was when we 5 stopped. 6 Q I just want to make it clear that as of 7 December of 2002 when you left, the punch list 8 items were not completed in the theatre area by 9 that time? 10 A I don't remember. I don't remember if 11 they were or not. 12 Q You remember that the punch list items 13 for the entire project wasn't completed by that 14 time? 15 A Yeah. I mean, I believe there were 16 areas that there were still items that were 17 outstanding. As an example like some of the 18 schools that were completed later, you know, we 19 issued punch lists, and then Jacobs was trying 20 to get all the contractors back to complete 21 them, but I know that they weren't completed by 22 the time we left the job. 23 Q In December of '02? 24 A Right.</p>	<p style="text-align: right;">Page 108</p> <p>1 A Yes. 2 Q I just want to ask you a few questions 3 about it. 4 Have you issued certificates of 5 substantial completion other than for this 6 project? 7 A Yes, I have. 8 Q And what is the indication to you that 9 that means when you issue a certificate of 10 substantial completion? 11 A Basically that the work has been 12 completed up to a certain point to abide by the 13 contract documents and there is punch list items 14 still remaining but that the work has been 15 completed at that point for the owner to use it 16 as it was intended to be used. 17 Q And this certificate, does it indicate 18 that the work has been completed pursuant to 19 VOA's architect drawings? 20 A Yes. 21 Q And once you, you meaning VOA, signed 22 this document, at that point that area is 23 substantially complete. Is that a fair 24 statement?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q But you don't recall whether there was 2 any still left in the area of the theatre? 3 A That, I don't remember. 4 Q Is there any point in time where you can 5 tell me that you recall there being work still 6 being done in the theatre area? In other words, 7 November, October, September -- 8 A I don't remember. 9 MR. O'CONNOR: Okay. That's all that I 10 have. 11 MR. BATTLE: Can you mark this as Migon 12 Exhibit 3. 13 (Whereupon, Migon Exhibit 14 No. 3 was marked for 15 identification.) 16 MR. O'CONNOR: For the record, Migon 17 Exhibit No. 3 is identical to Fitzgerald Exhibit 18 No. 2. 19 MR. BATTLE: I believe so. 20 EXAMINATION 21 BY MR. BATTLE: 22 Q You've seen this certificate of 23 substantial completion before; is that 24 correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 A Yes. 2 Q Is that your signature that appears on 3 that statement? 4 A Yes, it is. 5 Q Can you tell me the date on that 6 statement? 7 A It says 5/21/02. 8 Q As of May 21, 2002, would you agree with 9 me that this -- these areas listed here were 10 substantially completed? 11 A Yes. 12 MR. O'CONNOR: I object. As it relates 13 to VOA? 14 THE WITNESS: Yes. 15 BY MR. BATTLE: 16 Q Now, when you issue a certificate of 17 substantial completion, it can apply to several 18 different areas at one given time because 19 construction is ongoing in numerous areas; is 20 that right? 21 A Yes. 22 Q So this being issued applies to the 23 theatre, plus some other rooms within the actual 24 school?</p>

28 (Pages 106 to 109)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

Page 110

1 A That's correct.
 2 Q And those rooms are enumerated here.
 3 There are a number of them, correct?
 4 A Yes.
 5 Q Now, to your knowledge does anyone else
 6 besides the architect issue a certificate of
 7 substantial completion?
 8 A No.
 9 Q And once this certificate is issued, is
 10 that particular area or section turned back over
 11 to the owner?
 12 A That's correct.
 13 Q You mentioned that in August of 2002
 14 there wasn't much construction going on at Stagg
 15 and you were over at Sandburg working?
 16 A Yes.
 17 Q Do you remember anything going on in the
 18 theatre at that time?
 19 A I don't remember.
 20 MR. BATTLE: Thank you, sir. That's all
 21 that I have.
 22 EXAMINATION
 23 BY MR. VELAZQUEZ:
 24 Q With respect to the certificate of

Page 111

1 substantial completion, Exhibit 3, the date of
 2 the architect -- the date of the architect's
 3 signature is the date that governs the date of
 4 turnover to the owner?
 5 A That's my understanding.
 6 Q And that would be regardless of what
 7 other date any of the other entities on the
 8 certificate signed the certificate?
 9 A Yes.
 10 Q Do you know when Mr. Madden's accident
 11 occurred?
 12 A No, I don't.
 13 Q If you were to assume that the accident
 14 occurred in August of 2002, how many months or
 15 how much time between the date of substantial
 16 completion and turnover and the date of the
 17 accident did the District have possession of the
 18 performing arts theatre?
 19 A If May 21st was the substantial -- you
 20 are saying in August?
 21 Q Yes.
 22 A About three months more or less.
 23 Q And in those three months the District
 24 could have accessed the performing arts theatre

Page 112

1 as they wished?
 2 A Yes.
 3 Q Did you ever see -- did you ever see
 4 people -- employees of the District that worked
 5 in the building at Stagg High School?
 6 A Yes.
 7 Q Did they have a uniform or something
 8 that differentiated them from other people on
 9 the project?
 10 A I mean, I don't remember -- when you say
 11 employees, I mean, I worked more with the
 12 administrative staff. Those were the people I
 13 am referring to, so I don't recall them wearing
 14 any uniform.
 15 Q What about the maintenance personnel or
 16 the engineers?
 17 A I don't remember if they wore one or
 18 not.
 19 Q Now, within the three months between the
 20 date of substantial completion and the date of
 21 Mr. Madden's accident, would the school have had
 22 an opportunity to erect barricades if they
 23 wanted?
 24 A Sure.

Page 113

1 Q And then also they could have put up
 2 warning signs?
 3 A I would agree with that.
 4 Q Or planters?
 5 A Sure.
 6 Q And that would have been anywhere in the
 7 performing arts theatre?
 8 A Yes.
 9 Q Even on the edge of the stage near the
 10 edge into the orchestra pit?
 11 A Yes.
 12 Q Now, once there is substantial
 13 completion granted, no entity has possession of
 14 the area anymore?
 15 A Basically it's turned over to the owner.
 16 That's my understanding.
 17 Q So Jacobs would not have been in
 18 possession of the performing arts theatre after
 19 the date of substantial completion?
 20 A Right.
 21 Q And the date was May 21, 2002?
 22 A Right.
 23 Q Being that the owner was now in
 24 possession after May 21, 2002, they could have

29 (Pages 110 to 113)

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<p style="text-align: right;">Page 114</p> <p>1 hosted a school function if they wanted to?</p> <p>2 A Yes, that's correct.</p> <p>3 Q And do you know if they did?</p> <p>4 A I was made aware that they did, but</p> <p>5 prior to the last deposition I wasn't even aware</p> <p>6 of that.</p> <p>7 Q It was at the prior Regalado deposition</p> <p>8 that you became aware?</p> <p>9 A Yes.</p> <p>10 Q And with respect to that function, if</p> <p>11 they wanted to, the District could have put up</p> <p>12 ropes around the edge of the orchestra pit?</p> <p>13 A They could have, yes.</p> <p>14 Q Now, the possession of the owner after</p> <p>15 substantial completion, that's exclusive of</p> <p>16 possession from the architect, from the</p> <p>17 construction manager, and from any other</p> <p>18 contractors?</p> <p>19 A Can you rephrase it?</p> <p>20 Q Well, exclusive in that the architect,</p> <p>21 the construction manager, and the contractors</p> <p>22 don't have possession over that area anymore?</p> <p>23 A That's correct.</p> <p>24 Q I know that you said something about</p>	<p style="text-align: right;">Page 116</p> <p>1 portion of the performing arts theatre facing</p> <p>2 the stage, facing the stage from the audience</p> <p>3 perspective at the end of the stage. Had you</p> <p>4 ever been on the stage at that point, the rear</p> <p>5 of the stage from the viewer's perspective?</p> <p>6 A Yes. On the stage or --</p> <p>7 Q Yeah, on the stage.</p> <p>8 A I guess I'm not sure what you mean.</p> <p>9 Q Okay.</p> <p>10 Say for example there is the front</p> <p>11 and the back, with the front being the edge of</p> <p>12 the stage that is adjacent to the orchestra pit</p> <p>13 and the back of the stage being the area where,</p> <p>14 you know, maybe there is props or, you know, the</p> <p>15 area behind the curtains, that sort of thing.</p> <p>16 Did you have occasion to be on stage towards the</p> <p>17 back of the stage?</p> <p>18 A Yes, I have.</p> <p>19 Q And did you ever have occasion to walk</p> <p>20 from the back of the stage area towards the</p> <p>21 front of the stage?</p> <p>22 A Yes.</p> <p>23 Q When you were doing that, were you</p> <p>24 walking in the performing arts theatre with the</p>
<p style="text-align: right;">Page 115</p> <p>1 having to come back periodically, but you</p> <p>2 weren't too sure about how often you were at the</p> <p>3 project at Stagg around August of 2002. After</p> <p>4 May 21, 2002, did you have occasion to go back</p> <p>5 to Stagg?</p> <p>6 A The only reason would be if a contractor</p> <p>7 said that they were done with a punch list. We</p> <p>8 would get something from Jacobs asking for us to</p> <p>9 reinspect the area so we can sign off on it, but</p> <p>10 that would be really the only reason to</p> <p>11 follow-up on punch list items.</p> <p>12 Q So is it fair to say that after May 21st</p> <p>13 and following up with punch list items, you did</p> <p>14 go back to Stagg?</p> <p>15 A Yes, on occasion.</p> <p>16 Q During any of those times after</p> <p>17 May 21st did you have occasion to go to the</p> <p>18 stage area?</p> <p>19 A Yeah, I believe I did.</p> <p>20 Q Do you know if you were on the stage</p> <p>21 area before August of 2002?</p> <p>22 A I would have to say yes.</p> <p>23 Q When you were on the stage area were you</p> <p>24 ever -- say you are sitting from the audience</p>	<p style="text-align: right;">Page 117</p> <p>1 lights on or off?</p> <p>2 A They were on.</p> <p>3 Q When the lights were on, were you able</p> <p>4 to discern where the stage ended and where the</p> <p>5 orchestra pit began?</p> <p>6 A Yes. I mean, there was that line of</p> <p>7 trim that was a lighter color that kind of</p> <p>8 demarcated the end of the floor.</p> <p>9 Q And then aside from the lighter color or</p> <p>10 the trim, was it just obvious that it was</p> <p>11 open?</p> <p>12 A Yes.</p> <p>13 Q And do you know how deep the stage was</p> <p>14 from the front to back?</p> <p>15 A I don't recall.</p> <p>16 Q Would you say it was 50 feet deep or</p> <p>17 shorter?</p> <p>18 A I think it was probably shorter than</p> <p>19 that.</p> <p>20 Q Would you say 40 feet?</p> <p>21 A Maybe around there.</p> <p>22 Q At what point walking towards the stage</p> <p>23 can you -- do you realize or did you realize</p> <p>24 that there is the pit that is adjacent to the</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 front of the stage?</p> <p>2 MR. O'CONNOR: I just object. I think</p> <p>3 he knew it the whole time. He designed it.</p> <p>4 MR. VELAZQUEZ: Okay. So bad</p> <p>5 question.</p> <p>6 BY MR. VELAZQUEZ:</p> <p>7 Q At what point from walking from the back</p> <p>8 of the stage towards the front can you see or</p> <p>9 recognize that the stage ends and the pit</p> <p>10 begins?</p> <p>11 A I mean, that's kind of a hard thing to</p> <p>12 answer.</p> <p>13 Q Can you see it from the back of the</p> <p>14 stage?</p> <p>15 A You can certainly see the trim, but I</p> <p>16 don't know. I mean, I would have to be standing</p> <p>17 there to respond to that question.</p> <p>18 Q Okay.</p> <p>19 Is it at some point before you reach</p> <p>20 the front of the stage?</p> <p>21 A Yes, yes.</p> <p>22 Q Is it before you reach the midway point</p> <p>23 between front -- between back and front walking</p> <p>24 from back to front?</p>	<p style="text-align: right;">Page 120</p> <p>1 Stagg or if it was at one of the other schools,</p> <p>2 but I do recall that there was something</p> <p>3 there.</p> <p>4 Q And do you recall if that was before --</p> <p>5 I guess first off, you're not sure if it was</p> <p>6 Stagg High School?</p> <p>7 A You're right. I'm not sure if it was</p> <p>8 Stagg.</p> <p>9 Q And then with respect to the time frame</p> <p>10 that you saw it, regardless of whether it was</p> <p>11 Stagg, do you recall if you saw the caution tape</p> <p>12 before or after May 21, 2002?</p> <p>13 MR. O'CONNOR: Objection, asked and</p> <p>14 answered. You already asked him that, and he</p> <p>15 said it was after. That was your last</p> <p>16 question.</p> <p>17 MR. VELAZQUEZ: No, he just said that he</p> <p>18 recalled seeing them.</p> <p>19 THE WITNESS: I recall it was after the</p> <p>20 21st, after the substantial completion.</p> <p>21 BY MR. VELAZQUEZ:</p> <p>22 Q Now, after May 21, 2002, when you went</p> <p>23 back to the stage area, did you ever have</p> <p>24 occasion to tell the owner you should erect</p>
<p style="text-align: right;">Page 119</p> <p>1 A I am sure somewhere at the mid point you</p> <p>2 will be able to see it because you have a piece</p> <p>3 of wood that's a light color at the front of the</p> <p>4 stage that kind of demarcates the end of the</p> <p>5 stage. So, you know, I guess I am -- unless you</p> <p>6 can't see the color. That would be the only way</p> <p>7 that you wouldn't know.</p> <p>8 Q So then at least in approximation you</p> <p>9 could recognize that the stage ends and that the</p> <p>10 orchestra pit begins when you're about 20 feet</p> <p>11 away from the edge of the stage, front of the</p> <p>12 stage?</p> <p>13 A You can discern that the stage ends -- I</p> <p>14 don't know exactly how many feet, but you can</p> <p>15 discern that the stage ends if you are walking</p> <p>16 from the back to the front.</p> <p>17 Q When you went back to the stage area</p> <p>18 after May 21, 2002, did you ever at any point</p> <p>19 see any signs erected?</p> <p>20 A Like I said, I recall that there was,</p> <p>21 you know, some of that caution tape that was put</p> <p>22 on there, the yellow tape, and that there was</p> <p>23 some sort of posts that were put up along the</p> <p>24 front of it. I don't remember if it was at</p>	<p style="text-align: right;">Page 121</p> <p>1 signs or barricades or anything like that?</p> <p>2 A No. I mean, I wouldn't -- that wouldn't</p> <p>3 be for me to do.</p> <p>4 Q Would that be because it's up to the</p> <p>5 school to decide what to do with the stage</p> <p>6 area?</p> <p>7 A Well, at that time it's already -- they</p> <p>8 are the ones using the building. So, I mean,</p> <p>9 they would know what's best for their own use.</p> <p>10 Q Now, after May 21, 2002 when the stage</p> <p>11 area was substantially completed and turned</p> <p>12 over, if there was a light bulb that would have</p> <p>13 burnt out, would that have been something that</p> <p>14 the owner as possessor would have addressed?</p> <p>15 A Yeah, that would be up to them to do.</p> <p>16 Q What about maybe squeaky doors in the</p> <p>17 performing arts theatre?</p> <p>18 A I mean, I guess that's -- it depends on</p> <p>19 the circumstances. There is obviously warranty</p> <p>20 items that if something breaks you have a</p> <p>21 certain warranty period in which the contractor</p> <p>22 is responsible to fix it. The squeaky door,</p> <p>23 that just may be their janitor spraying WD40 on</p> <p>24 the hinge or something like that. A scenario</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 like that I would say that that's part of the 2 District's responsibility. 3 Q Did you ever see after May 21, 2002 4 employees of the District in the performing arts 5 theatre area? 6 A I don't recall. 7 Q As far as Jacobs is concerned, Jacobs 8 didn't have any duties related to design for the 9 project entirely? 10 A Right, they didn't have any 11 responsibility. 12 Q And Jacobs didn't -- Jacobs wasn't 13 present to do physical work on the District 230 14 project? 15 A Yeah, that was my understanding. They 16 were just there for supervision. 17 Q Jacobs didn't hire electricians? 18 A No. 19 Q Or sheet metal workers? 20 A No. 21 Q Now, with respect to the fire chief's 22 letter, do you know what, if any, jurisdiction 23 the fire chief has to make -- to send letters? 24 A I'm not sure.</p>	<p style="text-align: right;">Page 124</p> <p>1 the process for the occupancy permit? 2 A Well, I mean, just seeing what 3 transpired, yes, but I didn't know prior to this 4 that that's what it was. I've been on other 5 projects where they are not required to 6 walk-through, but every jurisdiction or region 7 is a little bit different. 8 Q So would you defer to an employee of the 9 entity that issues the occupancy permit to 10 explain what the process is? 11 A Yes, that's fair to say. 12 Q With respect to that letter, you stated 13 that you had never seen it before? 14 A Right. 15 Q As far as the performing arts theatre is 16 concerned and as far as you know, everything 17 that was designed -- was designed according to 18 code? 19 A Yes, as far as I know. 20 Q So nothing was substandard or in 21 violation of the code? 22 A Right, correct. 23 Q Do you know offhand what code it was? 24 A I don't know.</p>
<p style="text-align: right;">Page 123</p> <p>1 Q So you're not sure if he is sending a 2 letter based on a fire code? 3 A No, I'm not. I mean, you know, I guess 4 my understanding was that they had to go through 5 him to get the occupancy certificate, so that 6 was the only understanding that I had of it. 7 Q When was that your understanding that -- 8 when was that your understanding that the fire 9 chief was involved for purposes of an occupancy 10 permit? 11 A Basically they had told us to, you know, 12 do our punch list but that the District would 13 have to call the fire chief or someone in the 14 fire department to walk through the building or 15 the area before they could actually let students 16 in it. 17 Q And do you know who actually issues the 18 occupancy permit? 19 A I assume it's the fire department. I 20 don't know. 21 Q That's okay. 22 And if it's not the fire department 23 that issues the occupancy permit, do you know 24 for certain that the fire department is part of</p>	<p style="text-align: right;">Page 125</p> <p>1 Q Now, do you know whether or not the 2 items listed on that letter were just 3 recommendations that were being made by the fire 4 chief? 5 A I don't know. I mean, you know, they 6 were addressed to Jacobs, and I think Jacobs was 7 the one who walked through the building with 8 us. 9 Q So you can't say whether those items 10 were listed because the fire chief thought he 11 should recommend the change or because the items 12 were necessary in order to comply with some 13 code? 14 A I mean, I don't know if they were 15 necessary to comply with a code. I mean, if the 16 intent on that letter was to issue an occupancy 17 permit, the items he probably listed were to, 18 you know, satisfy him to get that permit in 19 place. So that's kind of my understanding of 20 it. 21 Q But you're not sure what authority he 22 has then? 23 A No, I don't. 24 Q Now, with respect to the items listed on</p>

32 (Pages 122 to 125)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 126</p> <p>1 the letter, the decision to oblige the fire 2 chief, that would have been made by the owner? 3 A When you say oblige the fire chief -- 4 Q Well, for example, comply. The decision 5 to comply with -- the decision to comply with 6 the fire chief's items listed on that letter, 7 which is labeled Moss No. 5 in the Madden case, 8 the decision for compliance with those items 9 would have been made by the District? 10 A I mean, the letter is addressed to 11 Gerry, so I think Gerry was the contact person 12 with the fire department here. So, I mean, I 13 assume since Gerry was the superintendent, he 14 would be the one, you know, making sure these 15 items get completed. 16 Q And the thing is though if those items 17 go beyond the scope of the project documents, 18 Jacobs doesn't have any authority to modify the 19 project documents and fulfill these items? 20 A I mean, I guess, you know, if it went 21 above and beyond what was on the drawings then, 22 yes, you know, basically they would tell -- I 23 would think they would tell the owner that, hey, 24 you know, these are above and beyond and we've</p>	<p style="text-align: right;">Page 128</p> <p>1 taking into account was cost? 2 A Yeah. I mean, it's typical on any 3 project. 4 MR. BARAKAT: And I would continue to 5 object as to speculation as to what the District 6 was taking into account in this particular 7 witness's knowledge. 8 MR. VELAZQUEZ: I think he testified 9 earlier that the District was budget 10 conscious. 11 BY MR. VELAZQUEZ: 12 Q With respect to the meetings that 13 everybody was involved with that I think you 14 referred to as being held by Jacobs, the purpose 15 of those meetings wasn't safety specifically? 16 A Yeah, from what I recall we kind of went 17 through open items, issues that may have been 18 involved. I mean, I think they may have had 19 some portion of the meeting that addressed 20 something on safety. 21 Q The primary purpose was to discuss the 22 progress of the project? 23 A Yes. 24 Q Now, with respect to the specifics for</p>
<p style="text-align: right;">Page 127</p> <p>1 got to do this in order to comply, what do you 2 want us to do, do you want us to spend the money 3 and do them. 4 Q Sorry. Are you finished? 5 A I was just going to say there could have 6 been additional items that the fire chief saw at 7 the time of his walk-through that may not have 8 been, quote, an issue but it may have been 9 something to resolve his concerns. 10 Q And do you know if any of those items 11 were above and beyond the contract documents? 12 A I don't know. 13 Q Now, as far as the pit cover is 14 concerned, it's the owner that would have made 15 the decision whether or not to install the pit 16 cover? 17 A Yes. 18 Q And that's for a number of reasons, one 19 being budget concerns you said earlier, I 20 think? 21 A I don't know if I said that. 22 MR. BARAKAT: Objection, speculation. 23 BY MR. VELAZQUEZ: 24 Q One of the things that the District was</p>	<p style="text-align: right;">Page 129</p> <p>1 the pit filler which I think -- 2 MR. O'CONNOR: Right here. 3 THE WITNESS: The specifications you 4 said? 5 BY MR. VELAZQUEZ: 6 Q Yes, I think they are the specs for the 7 pit filler. 8 A I think this is the field report. 9 Q This is the one. This document is Moss 10 No. 9. 11 Now, are those the specifications 12 for the actual filler that was installed? 13 A I believe so. 14 Q And the date on that document is 15 April 17, 2002? 16 A Yes. 17 Q Do you know if -- well, at the point 18 that the District requested VOA to inquire into 19 the possibility for a pit cover, at that point 20 does it become an addendum to the contract 21 documents? 22 A Addendum to the contract documents? 23 Q In other words, is an inquiry -- does an 24 inquiry make the pit filler part of the</p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 130</p> <p>1 contract?</p> <p>2 A I mean, at that point it's not an</p> <p>3 addendum. An addendum is typically issued</p> <p>4 before the contract is awarded. What it becomes</p> <p>5 is a modification to the contract.</p> <p>6 Q And do you know if this became a</p> <p>7 modification to the contract as of the</p> <p>8 April 17th date or is the April 17th date just a</p> <p>9 day that the specs were submitted to VOA and the</p> <p>10 owner for the purpose of consideration -- was</p> <p>11 considering possibilities for pit covers?</p> <p>12 A This was just when they had prepared the</p> <p>13 documents for us to give to the owner.</p> <p>14 Q So the pit cover which -- which from</p> <p>15 what I gather from earlier testimony it was</p> <p>16 eventually installed?</p> <p>17 A Yes, it was.</p> <p>18 Q Do you know at what point the</p> <p>19 specifications for the pit filler became an</p> <p>20 addendum to the contract documents?</p> <p>21 A I mean, I don't know. Basically we</p> <p>22 issued them, you know, on this date. We had --</p> <p>23 our contract was with Schuler & Shook, so they</p> <p>24 had sent us a proposal, and we would have signed</p>	<p style="text-align: right;">Page 132</p> <p>1 A I don't know off the top of my head,</p> <p>2 no.</p> <p>3 Q Do you know if -- at the point that this</p> <p>4 is prepared and submitted, there is still not a</p> <p>5 decision or -- strike that.</p> <p>6 At the time that this was prepared,</p> <p>7 the pit filler was still not a formal part of</p> <p>8 the contract, correct?</p> <p>9 MR. O'CONNOR: I object. I don't know</p> <p>10 what you mean by that.</p> <p>11 MR. VELAZQUEZ: Let me rephrase it. I'm</p> <p>12 trying to think of the best way to ask this.</p> <p>13 BY MR. VELAZQUEZ:</p> <p>14 Q When the District makes a request for an</p> <p>15 inquiry, requests VOA to look into possibilities</p> <p>16 for whatever, X, VOA or anybody else that's</p> <p>17 working with VOA looks into those possibilities.</p> <p>18 They come up with a possibility and state this</p> <p>19 is what we think could work. They state that to</p> <p>20 the owner. Just because the owner has requested</p> <p>21 and VOA or whatever architect would be working</p> <p>22 for whatever owner -- just because an architect</p> <p>23 proposes a possible solution to the owner's</p> <p>24 inquiry, it doesn't make the potential solution</p>
<p style="text-align: right;">Page 131</p> <p>1 it and sent it back to them saying they are</p> <p>2 going to get paid for the additional work.</p> <p>3 Q Is that additional work in terms of the</p> <p>4 additional work of investigating it, of looking</p> <p>5 into the possibilities, or additional work for</p> <p>6 overseeing the actual installation?</p> <p>7 A No, what it was --</p> <p>8 MR. BARAKAT: At this point I'm going to</p> <p>9 object. He already testified earlier that the</p> <p>10 additional work that Schuler & Shook was paid</p> <p>11 for was to create the specification and do the</p> <p>12 walk-through at the end after it was installed.</p> <p>13 You can answer, if you know.</p> <p>14 THE WITNESS: Basically that's what they</p> <p>15 were paid for was to come up with the</p> <p>16 specification, the layout drawing, and they</p> <p>17 would look at the shop drawings when they came</p> <p>18 in; and then after the pit fillers were</p> <p>19 installed, they would go and take a look at the</p> <p>20 installation and provide a punch list if</p> <p>21 required.</p> <p>22 BY MR. VELAZQUEZ:</p> <p>23 Q Do you know what the date of that</p> <p>24 proposal was?</p>	<p style="text-align: right;">Page 133</p> <p>1 part of the actual contract documents?</p> <p>2 A Right, right. I mean, you know, the</p> <p>3 proposal that was given to the owner basically</p> <p>4 identified that this is what they are going to</p> <p>5 do. This is above and beyond what we were</p> <p>6 contracted for and this is what it's going to</p> <p>7 cost you for Schuler & Shook to complete the</p> <p>8 work.</p> <p>9 Q So would it be fair to say that the</p> <p>10 specifications for the pit filler became a</p> <p>11 formal part of the contract documents after that</p> <p>12 April 17, 2002 date?</p> <p>13 A I mean, I guess I would say yes.</p> <p>14 Q And do you know one way or the other --</p> <p>15 if you don't know, that's okay. Do you know who</p> <p>16 it became formal -- whether or not the pit</p> <p>17 filler specifications became formal or</p> <p>18 formalized for the contract documents before or</p> <p>19 after May 21, 2002, the date of substantial</p> <p>20 completion?</p> <p>21 A I don't know. I mean, you know, if</p> <p>22 something came out of our office to the owner</p> <p>23 that said sign this for us to continue, I'm not</p> <p>24 aware of it. So I don't know the answer to</p>

34 (Pages 130 to 133)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 134</p> <p>1 that.</p> <p>2 Q The installation of the actual pit</p> <p>3 cover, do you know if that was something that</p> <p>4 the owner took upon themselves separately or was</p> <p>5 that also through the actual project?</p> <p>6 A My understanding was that it wasn't</p> <p>7 through the project, that it was separate.</p> <p>8 Because one of their concerns was there could</p> <p>9 have been a potential markup on each of the pit</p> <p>10 fillers for each school. So typically, you</p> <p>11 know, when you ask the general contractor to</p> <p>12 provide something, he is going to go to some</p> <p>13 sort of installer who is going to provide a</p> <p>14 markup to him. The general is going to provide</p> <p>15 a markup on top of that. The owner is getting a</p> <p>16 markup twice.</p> <p>17 One of the options was the school</p> <p>18 could go directly to one of these manufacturers</p> <p>19 and take care of it that way. So, you know, I</p> <p>20 guess looking at it that way did it ever become</p> <p>21 a formal part of the project? I don't know, but</p> <p>22 I was under the impression that the owner went</p> <p>23 directly to the manufacturer and left everybody</p> <p>24 out of it to go ahead and have these pit fillers</p>	<p style="text-align: right;">Page 136</p> <p>1 A Yes, I am aware of that.</p> <p>2 Q And VOA paid Schuler & Shook for their</p> <p>3 services?</p> <p>4 A Yes.</p> <p>5 Q Do you know if VOA used any other</p> <p>6 consultants prior to Schuler & Shook on the</p> <p>7 project?</p> <p>8 A I don't know.</p> <p>9 Q You testified earlier that the school</p> <p>10 relied on VOA for the theatre and VOA relied on</p> <p>11 Schuler & Shook for their services?</p> <p>12 A Yes.</p> <p>13 Q Are you aware of any work done by</p> <p>14 Schuler & Shook directly with or for the school</p> <p>15 district that VOA was not involved with?</p> <p>16 A No, I don't.</p> <p>17 Q Do you know of any work by Schuler &</p> <p>18 Shook related to the theatre for anyone else</p> <p>19 other than VOA?</p> <p>20 A No, I don't.</p> <p>21 Q So it's safe to say that as VOA's</p> <p>22 Consultant that all Schuler & Shook's work with</p> <p>23 respect to Stagg was part of VOA's contract?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 135</p> <p>1 purchased and installed.</p> <p>2 Q So then is it your understanding that</p> <p>3 the owner dealt directly with the contractor and</p> <p>4 the contract with that contractor was not part</p> <p>5 of the contracts which VOA, Jacobs Facilities,</p> <p>6 and Paschen had with respect to District 230?</p> <p>7 A That was my understanding, but I haven't</p> <p>8 looked at the contract, so I don't know.</p> <p>9 MR. VELAZQUEZ: That's all that I have</p> <p>10 for now.</p> <p>11 EXAMINATION</p> <p>12 BY MR. HUTCHINSON:</p> <p>13 Q Hi, Mr. Migon. My name is Andy</p> <p>14 Hutchinson. I represent Schuler & Shook.</p> <p>15 I understand you said you haven't</p> <p>16 seen any contracts related to the jobs. I take</p> <p>17 it that includes VOA's contract with Schuler &</p> <p>18 Shook?</p> <p>19 A Yeah, I didn't.</p> <p>20 Q Do you know who at VOA was responsible</p> <p>21 for contracting with Schuler & Shook?</p> <p>22 A I'm not sure.</p> <p>23 Q But you're aware that Schuler & Shook</p> <p>24 was a consultant to VOA?</p>	<p style="text-align: right;">Page 137</p> <p>1 Q VOA was not responsible for safety on</p> <p>2 the job site?</p> <p>3 A Right.</p> <p>4 Q So Schuler & Shook also had no</p> <p>5 responsibility for safety on the job site?</p> <p>6 A No.</p> <p>7 Q Are you aware of any OSHA codes or other</p> <p>8 building codes related to the need for a pit</p> <p>9 cover or lift?</p> <p>10 A No, I don't.</p> <p>11 Q Referring to Migon Exhibit 2, the</p> <p>12 transmittal from 1999, you had not seen that</p> <p>13 document before?</p> <p>14 A No, I haven't.</p> <p>15 Q Were you aware of any other early</p> <p>16 submissions by Schuler & Shook that related to a</p> <p>17 pit lift or filler as part of the design</p> <p>18 element?</p> <p>19 A No.</p> <p>20 Q Do you know who Tim McGrath is?</p> <p>21 A Yes, I do.</p> <p>22 Q Who is he?</p> <p>23 A He was the project manager that was on</p> <p>24 the job when it started.</p>

35 (Pages 134 to 137)

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TO PROTECTIVE ORDER

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 138</p> <p>1 Q Is he still at VOA?</p> <p>2 A No, he is not.</p> <p>3 Q Do you know when he left?</p> <p>4 A I think it was about a year after</p> <p>5 construction. I'm not sure what year though.</p> <p>6 Q But you and Mr. McGrath were at VOA at</p> <p>7 the same point in time?</p> <p>8 A Yes.</p> <p>9 Q Just different projects?</p> <p>10 A Yes.</p> <p>11 Q Did you ever discuss the pit cover with</p> <p>12 Mr. McGrath?</p> <p>13 A No, I didn't.</p> <p>14 Q Do you know who the Talaske Group is?</p> <p>15 A They are a sound consultant.</p> <p>16 Q Do you know who Gary Madaras is?</p> <p>17 A I have heard of his name.</p> <p>18 Q You don't --</p> <p>19 A I don't know if he is the project</p> <p>20 manager or who.</p> <p>21 Q Referring to Moss Exhibit 9, is it your</p> <p>22 testimony that Schuler & Shook prepared that</p> <p>23 document?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 140</p> <p>1 Q Was it Jeff Childs at Schuler & Shook</p> <p>2 that requested more money for the additional</p> <p>3 orchestra pit work?</p> <p>4 A Yes.</p> <p>5 Q And you said earlier that the school did</p> <p>6 not tell you why it wanted the pit cover?</p> <p>7 A No, they didn't specify a reason for</p> <p>8 it.</p> <p>9 Q But Schuler & Shook did produce this</p> <p>10 specification after the request was progressed</p> <p>11 through VOA --</p> <p>12 A Yes.</p> <p>13 Q -- to them?</p> <p>14 Do you know if there ever was an</p> <p>15 addendum to the agreement between VOA and</p> <p>16 Schuler & Shook which related specifically to</p> <p>17 the pit filler or cover?</p> <p>18 A I thought there was some sort of</p> <p>19 proposal that was sent from Schuler & Shook to</p> <p>20 our office for signature.</p> <p>21 Q Did you ever see the proposal?</p> <p>22 A I think I did, but I don't believe I</p> <p>23 signed it.</p> <p>24 Q You also said earlier that the cover was</p>
<p style="text-align: right;">Page 139</p> <p>1 Q You said there was part of the heading</p> <p>2 there that was not in there that VOA would have</p> <p>3 put in there?</p> <p>4 A Right.</p> <p>5 Q Can you clarify that?</p> <p>6 A Yes. Basically what we had received</p> <p>7 from Schuler & Shook was the orchestra pit</p> <p>8 filler, and I believe this may have been done in</p> <p>9 the District where it says interior buildout</p> <p>10 consolidated high school district, et cetera, et</p> <p>11 cetera. I didn't think that we put that on</p> <p>12 there. That may have been part of what the</p> <p>13 District did in providing their front end.</p> <p>14 Q That also includes the three high</p> <p>15 schools named in bold at the top?</p> <p>16 A Right.</p> <p>17 Q Do you know what that JAC is below</p> <p>18 there?</p> <p>19 A I don't know.</p> <p>20 Q You are saying this April 17th</p> <p>21 specification is not an addendum to the VOA,</p> <p>22 Schuler & Shook contract?</p> <p>23 A No, it's not an addendum. I wouldn't</p> <p>24 consider it an addendum.</p>	<p style="text-align: right;">Page 141</p> <p>1 installed near the end of December?</p> <p>2 A Yes.</p> <p>3 Q You were not present for that?</p> <p>4 A No, I wasn't present for the</p> <p>5 installation.</p> <p>6 Q Who at the school district told you that</p> <p>7 the school would issue the pit filler documents</p> <p>8 for bids?</p> <p>9 A Bob Hughes.</p> <p>10 Q Do you know if Schuler & Shook reviewed</p> <p>11 any shop drawings?</p> <p>12 A Yes, I do recall that.</p> <p>13 Q Do you know if they were passed on to</p> <p>14 VOA then?</p> <p>15 A They were after they reviewed them.</p> <p>16 Q Did you review those shop drawings?</p> <p>17 A I basically took a quick look at them</p> <p>18 but they are the -- Schuler & Shook were the</p> <p>19 ones who had more knowledge on it since this was</p> <p>20 a specialty item and not VOA.</p> <p>21 Q Would only Schuler & Shook have stamped</p> <p>22 the shop drawings for approval or would VOA have</p> <p>23 done that?</p> <p>24 A We would have done so also.</p>

36 (Pages 138 to 141)

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<p style="text-align: right;">Page 142</p> <p>1 Q Do you know who stamped the shop 2 drawings? 3 A It probably would have been me. 4 Q Do you know if Schuler & Shook prepared 5 a punch list for the cover after it was 6 installed? 7 A I don't remember. 8 Q But you do think that that was part of 9 their duties to prepare one after it was 10 installed? 11 A Yes. 12 Q Do you know who at VOA would have seen 13 that punch list? 14 A I mean, I think -- if it had been issued 15 towards the end of the summer, it probably would 16 have been me because the other people that were 17 working on the job they already -- I believe 18 already had started working on another project. 19 I kind of became the sole person involved with 20 the three schools since the construction started 21 dwindling down, and we didn't need to have a 22 full-time person working on each school, but it 23 would have been me if there was a punch list. 24 Q When you say you were the sole person</p>	<p style="text-align: right;">Page 144</p> <p>1 inspection that she would have gone through as 2 opposed to you? 3 A That could be possible. 4 Q Let me just ask you about a substantial 5 completion, and I'll give you a hypothetical. 6 If you have a building that needs to 7 be completed and there is several bathrooms but 8 one bathroom on the first floor is not finished, 9 you could block off that portion and still let 10 the owner use the building and issue a 11 certificate of substantial completion? 12 MR. BATTLE: Objection to an incomplete 13 hypothetical. 14 MR. VELAZQUEZ: Join. 15 MR. BATTLE: You can answer. 16 THE WITNESS: Looking at that what you 17 can do -- yes, but what we would do is we would 18 exclude it from the substantial completion list. 19 In other words, I wouldn't put it on there being 20 substantially complete. 21 BY MR. O'CONNOR: 22 Q In other words, you would have to look 23 at the attachment that goes to the substantial 24 completion list to decide whether that area of</p>
<p style="text-align: right;">Page 143</p> <p>1 left from VOA, was there anybody else besides 2 Elaine Fitzgerald who had been there that had 3 left? 4 A They just moved on to another project in 5 our office, but we had a person who was at 6 Andrew High School. His name was John Waters, 7 and at Sandburg there was a John Williamson. 8 Q So it was only Elaine Fitzgerald and 9 yourself at Stagg? 10 A Yes. 11 Q MR. HUTCHINSON: That's all that I have. 12 MR. VELAZQUEZ: Do you have more? 13 MR. O'CONNOR: I just have a few more. 14 E X A M I N A T I O N 15 BY MR. O'CONNOR: 16 Q Elaine described the guy that came from 17 the fire district. She called him Rocko. Do 18 you recall the name Rocko? 19 A I don't know. 20 Q His name was Russell, but they called 21 him Rocko. 22 A I don't remember. 23 Q Is there a chance if he would have came 24 through that he would have done more than one</p>	<p style="text-align: right;">Page 145</p> <p>1 the particular building that you are saying is 2 substantially complete is part of the 3 agreement? 4 MR. BATTLE: Objection. I don't think 5 that's his testimony. I think he said he 6 wouldn't put it on the list if it wasn't 7 completed. 8 MR. VELAZQUEZ: Join. 9 THE WITNESS: I wouldn't put it on the 10 list if it's not complete. I mean, there is an 11 example. The one that we looked at we have room 12 numbers identified of what is completed and 13 what's on the substantial completion. In Area A 14 as an example if I have got two rooms that are 15 incomplete and they have got a lot of work left, 16 I won't put it on there because they can't 17 occupy it. 18 BY MR. O'CONNOR: 19 Q Let me give you a hypothetical. 25 20 percent of the stage area can't be used because 21 there was something that needed to get done in 22 that one portion of it but the rest of the 23 theatre area was completed. Would you be able 24 to issue a certificate of substantial</p>

37 (Pages 142 to 145)

<p style="text-align: right;">Page 146</p> <p>1 completion?</p> <p>2 MR. BATTLE: Objection to the form,</p> <p>3 foundation, incomplete hypothetical, and --</p> <p>4 THE WITNESS: I don't know how to answer</p> <p>5 that question. I mean, I don't know what's not</p> <p>6 complete -- what you are saying is complete and</p> <p>7 what's not complete.</p> <p>8 BY MR. O'CONNOR:</p> <p>9 Q If someone couldn't use the actual stage</p> <p>10 area but could use the rest of the auditorium,</p> <p>11 would you issue a substantial completion?</p> <p>12 A We would exclude anything that would not</p> <p>13 be complete.</p> <p>14 Q So you could issue a substantial</p> <p>15 completion document, but it would exclude the</p> <p>16 area of the stage if the stage was not</p> <p>17 complete?</p> <p>18 A If it was its own area, sure, I guess we</p> <p>19 could do that. We could put an exclusion on</p> <p>20 what wasn't included in that, and the owner</p> <p>21 wouldn't be able to occupy it or use it for its</p> <p>22 intended purpose.</p> <p>23 Q Given that hypothetical, in your</p> <p>24 substantial completion document, where would</p>	<p style="text-align: right;">Page 148</p> <p>1 some event the following week that was going to</p> <p>2 happen?</p> <p>3 A Yeah, they had asked us to look at --</p> <p>4 everybody try to get this date -- the work done</p> <p>5 and for us to issue the certificate because</p> <p>6 there was some function that they wanted to do</p> <p>7 or something like that.</p> <p>8 Q Would you agree with me that if the</p> <p>9 function didn't involve use of the stage, in</p> <p>10 other words putting on a theatre production,</p> <p>11 that the school district could use the chairs</p> <p>12 and the auditorium and present things without</p> <p>13 using the stage area?</p> <p>14 A Can you repeat that?</p> <p>15 Q Sure.</p> <p>16 Would you agree with me that if the</p> <p>17 school intended to use the function to have a</p> <p>18 gathering place for people to use the seating in</p> <p>19 the theatre area, weren't necessarily going to</p> <p>20 use the stage area for a theatre production but</p> <p>21 were going to do some other kind of awards or</p> <p>22 ceremony, would you agree that that would be a</p> <p>23 use of that building even though they couldn't</p> <p>24 use the stage?</p>
<p style="text-align: right;">Page 147</p> <p>1 that have been placed?</p> <p>2 A Where it says exceptions on the</p> <p>3 following page here. Here are the exceptions</p> <p>4 that we would have listed saying, you know, this</p> <p>5 area is not ready or something like that. If</p> <p>6 it's a room -- if it's its own separate room</p> <p>7 with a room number, which is how the drawings</p> <p>8 really show everything, then we would identify</p> <p>9 that. That room wouldn't just appear on here.</p> <p>10 It wouldn't be put on here. Certain areas, as</p> <p>11 long as they were deemed substantially complete,</p> <p>12 could be used. I mean, we would write an</p> <p>13 exception on what wasn't usable or what was</p> <p>14 usable.</p> <p>15 Q Do you recall that the school district</p> <p>16 on this project said that they wanted to use</p> <p>17 that auditorium for their graduation ceremony?</p> <p>18 A I don't remember that. We obviously</p> <p>19 substantialled the building, and I understand</p> <p>20 that there was an event that followed the</p> <p>21 following week or something like that.</p> <p>22 Q Was it your understanding that the</p> <p>23 reason that you were being asked to issue that</p> <p>24 substantial completion was because there was</p>	<p style="text-align: right;">Page 149</p> <p>1 A I think they could use the stage.</p> <p>2 Q At the point when you issued this</p> <p>3 substantial completion, do you know whether that</p> <p>4 stage at that point was ready for a theatre</p> <p>5 production to be put on?</p> <p>6 A Well, we got a punch list from Schuler &</p> <p>7 Shook. I mean, they were the people we were</p> <p>8 looking for to tell us yes or no. There was</p> <p>9 nothing on there that they identified to me that</p> <p>10 said, no, you can't use it. To my knowledge,</p> <p>11 you know, everything would be used as</p> <p>12 intended.</p> <p>13 Q So in your opinion at that point the</p> <p>14 stage could have been used for a theatre</p> <p>15 production?</p> <p>16 MR. BATTLE: Objection. He just asked</p> <p>17 and answered that question.</p> <p>18 THE WITNESS: I mean, that's my</p> <p>19 understanding of it, yes.</p> <p>20 BY MR. O'CONNOR:</p> <p>21 Q That would be irrespective of the punch</p> <p>22 list items?</p> <p>23 A Yes, irrespective. The punch list items</p> <p>24 are just items that could be a nick in the wall.</p>

38 (Pages 146 to 149)

<p style="text-align: right;">Page 150</p> <p>1 It could be a broken ceiling tile, but that</p> <p>2 doesn't stop the owner from using the space.</p> <p>3 MR. O'CONNOR: That's all that I have.</p> <p>4 MR. BATTLE: Let me get a couple points</p> <p>5 of clarity.</p> <p>6 EXAMINATION</p> <p>7 BY MR. BATTLE:</p> <p>8 Q Do you know exactly what's needed to put</p> <p>9 on a theatre production?</p> <p>10 A No, I don't.</p> <p>11 Q Do you know exactly what's needed from</p> <p>12 construction workers to complete construction</p> <p>13 pursuant to VOA drawings?</p> <p>14 A I mean, you are saying like if --</p> <p>15 Q Like if you walked through can you use</p> <p>16 your VOA drawings and determine if an area is</p> <p>17 substantially complete pursuant to those</p> <p>18 drawings?</p> <p>19 A Yes, you could.</p> <p>20 Q And that's the reason why you issue your</p> <p>21 certificate of substantial completion?</p> <p>22 A Right.</p> <p>23 Q Is that correct?</p> <p>24 A Yes, that's correct.</p>	<p style="text-align: right;">Page 152</p> <p>1 for any testimony or opinions regarding what</p> <p>2 Jacobs' contractual duties were for District 230</p> <p>3 for the Stagg High School project?</p> <p>4 A I would talk to John more so than I</p> <p>5 would talk to Gerry about that.</p> <p>6 Q I asked it wrong.</p> <p>7 With respect to opinions as to what</p> <p>8 Jacobs' duties were for the District 230</p> <p>9 project, is that something that you would defer</p> <p>10 to John Szott or Gerry Myers to set forth in</p> <p>11 terms of testimony?</p> <p>12 MR. O'CONNOR: I would object as to it</p> <p>13 relates to the contract documents.</p> <p>14 THE WITNESS: I don't really understand</p> <p>15 it. I really don't understand what you're</p> <p>16 trying to ask.</p> <p>17 MR. VELAZQUEZ: Sure.</p> <p>18 BY MR. VELAZQUEZ:</p> <p>19 Q With respect to what duties Jacobs had</p> <p>20 on this project, is that something that you</p> <p>21 would let John Szott, as somebody involved with</p> <p>22 contracts, or Gerry Myers, as a superintendent</p> <p>23 for Jacobs -- is that something that you would</p> <p>24 let those two explain to everyone else here?</p>
<p style="text-align: right;">Page 151</p> <p>1 Q With respect to the whole honors night</p> <p>2 issue before your previous deposition, you</p> <p>3 didn't know anything about it or didn't remember</p> <p>4 it?</p> <p>5 A No, I didn't remember.</p> <p>6 Q Do you remember any other events or</p> <p>7 anything that the school district may have done</p> <p>8 in that area after you issued your</p> <p>9 certificate?</p> <p>10 A I don't remember.</p> <p>11 MR. BATTLE: Fair enough. That's all I</p> <p>12 have. Thanks.</p> <p>13 MR. VELAZQUEZ: Just a couple more</p> <p>14 questions, and then that's it.</p> <p>15 EXAMINATION</p> <p>16 BY MR. VELAZQUEZ:</p> <p>17 Q With respect to John Szott, you referred</p> <p>18 to him as somebody who was involved with the</p> <p>19 contract from Jacobs' perspective?</p> <p>20 A Yes.</p> <p>21 Q With Gerry Myers, you referred to him as</p> <p>22 the superintendent for Jacobs?</p> <p>23 A Yes.</p> <p>24 Q Would you refer to John Szott or Gerry</p>	<p style="text-align: right;">Page 153</p> <p>1 A Yes, yes. I would say John Szott would</p> <p>2 have better knowledge of that.</p> <p>3 Q That would also include the duty or lack</p> <p>4 thereof regarding safety?</p> <p>5 A I believe so.</p> <p>6 MR. VELAZQUEZ: Okay. Thank you.</p> <p>7 MR. BARAKAT: I just have a couple of</p> <p>8 questions.</p> <p>9 EXAMINATION</p> <p>10 BY MR. BARAKAT:</p> <p>11 Q You were not involved in the initial</p> <p>12 design phase of the Stagg High School project?</p> <p>13 A No, I wasn't.</p> <p>14 Q Did you have an opportunity to take a</p> <p>15 look at those documents?</p> <p>16 A Not until I hopped on the project.</p> <p>17 Q Do you have a recollection of those</p> <p>18 documents as you sit here today?</p> <p>19 A I looked at them before the previous</p> <p>20 deposition, but that was like the last time.</p> <p>21 Q Did you look at them for this</p> <p>22 deposition?</p> <p>23 A No, I didn't.</p> <p>24 Q In general when VOA presents drawings</p>

39 (Pages 150 to 153)

<p style="text-align: right;">Page 154</p> <p>1 and specifications to an owner, those drawings 2 and specifications are to follow the local codes 3 necessary for that building to be built? 4 A Yes. 5 Q Is that something that VOA does or do 6 they hire consultants to do that? 7 A To do the code review? 8 Q Right. 9 A It varies. Sometimes we do it. 10 Sometimes we do hire a code consultant. 11 Q Do you know if VOA did that on this 12 project or they hired a consultant? 13 A To my knowledge I think there was a code 14 consultant. 15 Q Do you know who that was? 16 A No, I don't. 17 Q That code consultant would then take a 18 look at your drawings and make sure that they 19 were up to code? 20 A Yeah, I think they would give us -- as 21 an example, I mean, there was -- the building 22 types may have differed from the theatre to the 23 school. So, yes, they would review what kind of 24 building and what we're doing with the building</p>	<p style="text-align: right;">Page 156</p> <p>1 this project, which included the interior 2 buildout such as the stage and the orchestra pit 3 and the seating and all of that, that was all up 4 to code as far as you know? 5 A To my knowledge, yes. 6 Q With regards to, you know, the field 7 observation that you do, you represented -- it 8 was your job to represent the owner with regards 9 to making sure that what was going on 10 construction wise met the specifications that 11 VOA produced? 12 A That's correct. 13 Q And that's in fact what you were doing 14 when you had a field observer at each high 15 school and specifically Elaine Fitzgerald at 16 Stagg? 17 A Yes. 18 Q And you would walk through and make sure 19 that the building was being built according to 20 the documents and specifications that were 21 produced in the design phase? 22 A Yes. 23 Q If they weren't, then you would make 24 sure that that was corrected?</p>
<p style="text-align: right;">Page 155</p> <p>1 and they would give us the recommendations, I 2 guess, like on fire ratings and things of that 3 nature. 4 Q Before you handed those documents over 5 to the owner, you would make sure that they 6 were -- the drawings and specifications met 7 those codes? 8 A Yes. 9 Q And the design of a performing arts 10 theatre is a very specialized kind of 11 building? 12 A Right. 13 Q And the interior specifically is even 14 more specialized? 15 A Yes. 16 Q And that's not something -- that's 17 something that VOA would hire consultants to 18 take a look at? 19 A Yes, we would. 20 Q In this case you hired Schuler & Shook 21 to do that for you? 22 A Yes. 23 Q After consulting with Schuler & Shook, 24 the documents that you presented to the owner on</p>	<p style="text-align: right;">Page 157</p> <p>1 A Yes. 2 Can I just clarify that? What we 3 would do is we would notify Jacobs. We wouldn't 4 go out and physically correct it. 5 Q That's not what I meant. You would make 6 sure that they would get corrected by the proper 7 entity? 8 A Correct. We would send a letter or an 9 E-mail or something saying that this doesn't 10 comply, and Jacobs then would be responsible to 11 contact the contractor, whoever it was, to 12 correct the work. 13 Q Now, I know you didn't review any of the 14 contract documents for this particular job. 15 People started talking about contract documents. 16 Just so we're all clear, you indicated earlier 17 that an addendum to the contract is something 18 that occurs prior to construction? 19 A That's typically -- 20 Q Just so we all get our terminology 21 correct. 22 A Yes. 23 Q So if there is a contract, before it 24 gets executed and there is a change, that would</p>

40 (Pages 154 to 157)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 158</p> <p>1 be an addendum?</p> <p>2 A Yes.</p> <p>3 Q After the contract is already being</p> <p>4 executed, construction is going on, and say</p> <p>5 there is a change order, something like that.</p> <p>6 What would the term that you would understand to</p> <p>7 be for that sort of thing?</p> <p>8 A It would be -- well, we would issue like</p> <p>9 an RFP, a request for a proposal. That would</p> <p>10 get sent to Jacobs, and they would distribute it</p> <p>11 to whoever the change effected. They would get,</p> <p>12 you know, a quote back from a contractor and</p> <p>13 they would then issue a change order saying --</p> <p>14 they would issue the RFP back to us. We would</p> <p>15 look at it for the pricing, content, and</p> <p>16 whatnot. If there was any disagreements or any</p> <p>17 questions that we had, we would talk to them.</p> <p>18 Once everything was okay between what we looked</p> <p>19 at and what Jacobs looked at, then a formal</p> <p>20 change order was issued to the contractor, and</p> <p>21 that was just to get that contractor paid.</p> <p>22 MR. VELAZQUEZ: Dean, was that last</p> <p>23 question directed to changes in general or the</p> <p>24 actual pit cover?</p>	<p style="text-align: right;">Page 160</p> <p>1 A Yes.</p> <p>2 Q And you went to the owner and indicated</p> <p>3 that?</p> <p>4 A (Nonverbal response.)</p> <p>5 Q And they okayed it?</p> <p>6 A Yes.</p> <p>7 Q And that's indicated in those E-mails</p> <p>8 that we've already discussed?</p> <p>9 A Right.</p> <p>10 Q And that's how that process came</p> <p>11 about?</p> <p>12 A That's correct.</p> <p>13 Q And that's how that specification was</p> <p>14 produced?</p> <p>15 A Right.</p> <p>16 EXAMINATION</p> <p>17 BY MS. ELRABADI:</p> <p>18 Q Al, you testified that to your knowledge</p> <p>19 pit filler's main purpose is to expand the stage</p> <p>20 floor?</p> <p>21 A Yes.</p> <p>22 Q Did you learn that from someone on the</p> <p>23 project?</p> <p>24 A Well, Jeff was kind of the one that I</p>
<p style="text-align: right;">Page 159</p> <p>1 MR. BARAKAT: No, in general. So far</p> <p>2 I'm talking about in general, not even with</p> <p>3 regards to this particular project.</p> <p>4 BY MR. BARAKAT:</p> <p>5 Q Specifically when we are talking</p> <p>6 specifically about the specifications for the</p> <p>7 pit filler that was done, Schuler & Shook were</p> <p>8 VOA's consultants?</p> <p>9 A Yes.</p> <p>10 Q So you didn't need to issue an RFP or do</p> <p>11 any of that other stuff because they were VOA's</p> <p>12 consultant?</p> <p>13 A That's correct.</p> <p>14 Q So any of that -- any dealings between</p> <p>15 Schuler & Shook would have been internal between</p> <p>16 VOA and Schuler & Shook?</p> <p>17 A That's correct.</p> <p>18 Q When you start talking about the owner</p> <p>19 asked for a pit filler and then Schuler & Shook</p> <p>20 told you that they -- Jeff Childs apparently</p> <p>21 told you that that was something outside of the</p> <p>22 scope of your contract between VOA and Schuler &</p> <p>23 Shook and that there was additional money that</p> <p>24 needed to be paid to pursue that project?</p>	<p style="text-align: right;">Page 161</p> <p>1 talked to. That's kind of the reason he gave</p> <p>2 me.</p> <p>3 Q So your consultant, who is a theatre</p> <p>4 expert, told you that pit filler's main purpose</p> <p>5 is to expand stage floors to expand the usage of</p> <p>6 that floor; is that correct?</p> <p>7 A Right, that's correct.</p> <p>8 Q And the school district was concerned</p> <p>9 about getting a pit filler that can ultimately</p> <p>10 be installed and uninstalled by someone -- by</p> <p>11 their maintenance personnel, is that true?</p> <p>12 A Yes.</p> <p>13 Q So is it fair to say that as early as</p> <p>14 these E-mails in April of 2002 you told Jeff</p> <p>15 that the school district was concerned that -- I</p> <p>16 will quote this. This should be acceptable for</p> <p>17 a few staff members to remove and reinstall.</p> <p>18 Are you telling Jeff Childs at Schuler & Shook</p> <p>19 that the school district was concerned about</p> <p>20 getting pit fillers that can be easily installed</p> <p>21 and reinstalled by District 230 staff and</p> <p>22 maintenance personnel?</p> <p>23 A I don't know who was going to do it, but</p> <p>24 ultimately it would be either the staff or maybe</p>

41 (Pages 158 to 161)

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<p style="text-align: right;">Page 162</p> <p>1 students that, you know, would be involved in 2 any type of performance to remove these things. 3 So that was a concern of the Districts that they 4 didn't weigh too much. 5 Q You're not exactly sure who the staff 6 members would be? 7 A This refers to the District's staff 8 members. 9 Q So is it possible that as early as April 10 of 2002 maintenance personnel were aware of the 11 presence of an orchestra pit? 12 A That, I don't know. I know that the 13 District was aware of what they were asking us 14 to do. 15 Q And you said that the pit fillers that 16 were actually installed were -- you called them 17 a Ugo version? 18 A Yes. 19 Q Do you know if it was -- what actually 20 was involved in installation? 21 A You mean to actually install them? 22 Q Yes. 23 A From what I recall, the trim that was on 24 the front of the stage and around the area had</p>	<p style="text-align: right;">Page 164</p> <p>1 Bob Hughes that Mr. Madden fell in August of 2 2002? 3 A Yes. It was through the District that I 4 heard about it. 5 Q Do you recall any other details about 6 what he told you about how the accident might 7 have occurred? 8 A He mentioned something about the 9 individual had backed into it, that there was 10 some performance going on or they were getting 11 ready for a performance and he backed into it. 12 That was what I recall Bob telling me. 13 Q Do you know at that time if there were 14 actually barricades installed? 15 A He mentioned something that there were 16 barricades there but they were moved either for 17 the stage installation or something for the set 18 installation. If they were moved by him or by 19 somebody, I don't know. He did mention that 20 there were barricades there and the person 21 backed into it. 22 Q So you didn't here that he walked head 23 on into the pit? 24 A No, that's not the story that I heard.</p>
<p style="text-align: right;">Page 163</p> <p>1 to be modified a little bit for them to be 2 placed flush with the stage floor. 3 Q So there could be a number of pieces 4 that make up the entire pit cover? 5 A Oh, yes, because it would be too heavy, 6 and I don't think anybody will be able to remove 7 it. 8 Q So there could have been as many as 9 10? 10 A As many as 10 or 20, yes. 11 Q But you don't know exactly how many? 12 A I don't know exactly how many. 13 Q Each one needed to be installed and 14 taken out individually? 15 A Right. I guess -- my understanding is 16 there is an order. You start out on one end and 17 each piece is bigger. So there is a consecutive 18 order to how to put these things in. 19 Q Do you know if there was ever any 20 discussion with the school district and, for 21 instance, maintenance personnel about how to 22 install these exact pit fillers? 23 A No, I don't know. 24 Q You also testified that you heard from</p>	<p style="text-align: right;">Page 165</p> <p>1 Q The document that was recently produced 2 by Mr. Hutchinson related to pit filler options. 3 I'm not sure which exhibit that is. 4 MR. O'CONNOR: 2. 5 BY MS. ELRABADI: 6 Q It's dated August 4, 1999. So is it 7 fair to say that the school district had an 8 option as early as '99 to install them -- 9 MR. BARAKAT: I'm going to object to 10 this. This document, Migon Exhibit 2, is a 11 Schuler & Shook document that is to Tim McGrath 12 of VOA. There has been no evidence that this 13 was ever presented to the school or the school 14 had any options. This particular witness has 15 testified that he hasn't seen this document 16 before today, and I am going to object to 17 foundation and speculation. 18 If you know if the District had the 19 option of having pit fillers installed in August 20 of '99, you may answer. 21 THE WITNESS: No, I don't know that. 22 BY MS. ELRABADI: 23 Q My final question relates to Exhibit 24 Moss No. 9 in the Section Part 3, Execution,</p>

42 (Pages 162 to 165)

<p style="text-align: right;">Page 166</p> <p>1 Section 3.2 in the installation section. Part A 2 says contractor shall employ only experienced 3 platform system installers for the installation 4 of this section. A competent supervisor shall 5 be maintained on this project during the entire 6 installation. 7 Did you take that to mean anyone on 8 the current budget? 9 A No, that would have been the contractor 10 that installs the pit fillers. 11 MS. ELRABADI: Thank you. 12 MR. BARAKAT: I've got two follow-ups. 13 E X A M I N A T I O N 14 BY MR. BARAKAT: 15 Q Regarding the use of the terms addendum 16 and change order, were you aware of an addendum 17 to the agreement between VOA and Schuler & Shook 18 related to the investigation of the pit 19 filler? 20 A No, I wasn't. 21 Q And was there ever a formal change order 22 issued regarding getting a pit filler cover in 23 2002? 24 A Not that I recall, no. I don't know.</p>	<p style="text-align: right;">Page 168</p> <p>1 STATE OF ILLINOIS)) SS. 2 COUNTY OF COOK) 3 4 5 6 I, SHERRY L. JONES, a 7 Certified Shorthand Reporter for the State of 8 Illinois, do hereby certify that the foregoing 9 was reported by stenographic and mechanical 10 means, which matter was held on the date, and at 11 the time and place set out on the title page 12 hereof and that the foregoing constitutes a true 13 and accurate transcript of same. 14 I further certify that I am not 15 related to any of the parties, nor am I an 16 employee of or related to any of the attorneys 17 representing the parties, and I have no 18 financial interest in the outcome of this 19 matter. 20 21 22 23 C.S.R. No. 084-004024 24</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. BARAKAT: That's it. 2 MR. O'CONNOR: Signature? 3 MS. ELRABADI: We'll waive signature. 4 (AND FURTHER DEPONENT SAITH NOT.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	

43 (Pages 166 to 168)

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